The Kansas Court of Industrial Relations

John Hugh Bowers

Digitized by the Internet Archive
in 2026

https://archive.org/details/kansascourtofind0000john

The National Social Science Series

Edited by Frank L. McVey, Ph.D., LL.D., President of the University of Kentucky

Now Ready: Each, One Dollar

AMERICAN CITY, THE. Henry C. Wright, First Deputy Commissioner, Department of Public Charities, New York City.

AMERICAN TRADE UNIONISM. George M. Janes, Professor of Economics, Washington and Jefferson College.

CAUSE AND CURE OF CRIME, THE. Charles R. Henderson, late Professor of Sociology, The University of Chicago.

COST OF LIVING, THE. W. E. Clark, Professor of Political Science, The College of the City of New York.

FAMILY AND SOCIETY, THE. John M. Gillette, Professor of Sociology, The University of North Dakota.

GOVERNMENT FINANCE IN THE UNITED STATES. Carl C. Plehn, Professor of Finance, The University of California.

HOUSING AND THE HOUSING PROBLEM. Carol Aronovici, Lecturer on Social Problems, The University of Minnesota.

KANSAS COURT OF INDUSTRIAL RELATIONS, THE. John Hugh Bowers, Professor of Social Sciences, State Teachers Normal College, Pittsburg, Kansas.

MAKING OF CITIZENS, THE. J. G. de Roulhac Hamilton, Kenan Professor of History and Government, University of North Carolina, and Edgar W. Knight, Professor of Rural Education, University of North Carolina.

MEANING OF CHILD LABOR, THE. Raymond G. Fuller.

MONEY. William A. Scott.

MONROE DOCTRINE AND THE GREAT WAR, THE. Arnold Bennett Hall, Associate Professor of Political Science, The University of Wisconsin.

NATIONAL EVOLUTION. George R. Davies, Assistant Professor in the Department of Economics, Princeton University.

PROPERTY AND SOCIETY. A. A. Bruce, Associate Justice Supreme Court, North Dakota.

PSYCHOLOGY OF CITIZENSHIP, THE. Arland D. Weeks, Professor of Education, North Dakota Agricultural College.

RURAL PROBLEMS IN THE UNITED STATES. James E. Boyle, Extension Professor of Rural Economy, College of Agriculture, Cornell University.

SOCIAL ANTAGONISMS. Arland D. Weeks.

SOCIAL ENVIRONMENT. George R. Davis.

SOCIAL INSURANCE IN THE UNITED STATES. Gurdon Ransom Miller, Professor of Sociology and Economics, Colorado State Teachers' College.

SOCIOLOGY. John M. Gillette.

SOME PROBLEMS OF RECONSTRUCTION. Annie Marion MacLean, Extension Assistant Professor of Sociology, The University of Chicago.

STATE AND GOVERNMENT, THE. J. S. Young, Professor of Political Science, The University of Minnesota.

STATISTICS. William B. Bailey, Professor of Practical Philanthropy, Yale University, and John Cummings, Expert Special Agent, Bureau of the Census.

SYMPATHY AND SYSTEM IN GIVING. Elwood Street, Director of Welfare League, Louisville, and Secretary American Association for Community Organization.

TAXATION. C. B. Fillebrown, late President Massachusetts Single Tax League.

TRUSTS AND COMPETITION. John F. Crowell, Associate Editor of the Wall Street Journal.

WOMEN WORKERS AND SOCIETY. Annie Marion MacLean.

THE KANSAS COURT of INDUSTRIAL RELATIONS

The Philosophy and History of the Court

By

JOHN HUGH BOWERS, PH. D., LL. B.

Professor of Social Sciences at the State Teachers Normal College at Pittsburg, Kansas. Author of *Mistakes in College Teaching,* Etc.

CHICAGO
A. C. McCLURG & CO.
1922

Copyright
A. C. McClurg & Co.
1922

Published November, 1922

Printed in the United States of America

EDITOR'S PREFACE

THE Kansas Industrial Court has been the subject of praise and vituperation. On one side it is declared to be the solution of strike difficulties; on the other it is regarded as a system of slavery. It does, however, take into consideration the rights of the public and it is high time. Professor Bowers is frankly a protagonist of the Court and in his book argues strongly for its provisions. The book containing his views are offered as a timely discussion of an important contribution to the legal machinery of the modern state.

F. L. M.

544

AUTHOR'S PREFACE

THE Kansas Court of Industrial Relations is a Court in the sense that it is a tribunal established by the legislature of the state for the administration of industrial justice. The Court has now been organized less than two years and has adjudicated thirty-three industrial controversies. Thirty-two of these thirty-three controversies were initiated by organized labor or by unorganized groups of laborers. One case has been brought by employers. The Amalgamated Association of Street and Electric Railway Workers, the International Brotherhood of Electrical Workers, the International Brotherhood of Stationary Firemen and Oilers, the Brotherhood of Railway Carmen of America, and other labor organizations affiliated with the American Federation of Labor, have filed cases for local unions in Kansas. In many of these cases the national representatives have appeared in court and testified or assisted in the presentation of the evidence. One case was brought by a group of members of various local unions of the United Mine Workers of America.

In thirty-two of the thirty-three cases adjudicated, the orders of the Industrial Court have been complied with by both parties to the controversy. In the one exception, the case of the Wolff Packing Company, the company refused to comply with the order of the Industrial Court and the case was appealed to the Supreme Court of the State of Kansas, which appeal is provided for under Sec. 12 of the Act creating the Industrial Court. The Supreme Court of Kansas has already decided the points of law in favor of the Industrial Court Act, and the only remaining feature of the case is the reasonableness of the award made by the Industrial Court which will be decided quite soon, because, in the Supreme Court, appeals from the Industrial Court take precedence over other civil cases.

The widespread interest in the Kansas Court of Industrial Relations has been intensified by President Harding's Annual Message to Congress, December, 1921, in which he recommends a "Judicial or quasi-judicial tribunal for the consideration and determination of all disputes which menace the public welfare." The President goes beyond "arbitration" and uses the words "judicial determination" in controversies between labor and capital.

More than to any other one man, the honor of having established the Industrial Court belongs to Governor Henry J. Allen of Kansas who modestly says: "The Court is the direct result of public sentiment aroused by the Kansas coal strike." The coal strike in Kansas in the Fall of 1919 was not very different from what it was in other states at that same time, with the possible exception that in Kansas the miner's leader was obdurate. In Kansas as elsewhere the question at issue was: When there is a strike in an essential industry which stops the supply of a vital necessity of life, and the public is threatened with suffering and even with death; does the public have a right to see that production is resumed, and if so, by what methods shall the public accomplish its protection?

The writer contends: that the state has a right to protect the public and to see that essential industries continue functioning in a regular way; that the state government is the best agency for the protection of the public; and that the best instrumentality or tribunal thus far devised for such service is a special court such as the Kansas Court of Industrial Relations.

In presenting the philosophical part of this

thesis—that is the part that endeavors to explain the duty of the state to protect the people—and in narrating the story of how the Court was made, and the work of the Court, the writer has endeavored both to collect and to give fairly all the arguments against the Court along with the arguments for the Court.

One of the latest notable additions to the ranks of those who criticize the Court says that it is weak and can do nothing. This objection is well answered in the abundance of good work that the Court has already done as shown by its records and by the press of the state. Another critic talks at length about the many objectionable things that the Court might do, clothed as it is with such unusual powers. These two new critics contradict one another; and they cannot both be right. The reply to the latter is that other necessary branches of our government have *power* to do unusual and objectionable things which they never do. A highly civilized state needs many public servants who have power to do harm which they never do; and we cannot dispense with the services of the functionary because of the danger of maladministration. All judges have power to do great wrong but they are seldom accused of misusing that

power. Civilization demands such a tribunal as the Industrial Court. It is the task of patriotic citizens to secure good men for that service.

For many years the writer has been a student and teacher of the economic and legal phases of industrial problems, and has been a resident of Pittsburg, Kansas, the center of the field of the controversy, during the entire time of the conflict out of which grew the Industrial Court; has been personally acquainted with the significant individuals concerned and has had first hand information concerning the making of the Court and its history. The writer is indebted to Governor Allen for much of the materials consulted, and to Judge W. L. Huggins, the Presiding Judge of the Court, for the records of the Court.

The object has been to furnish, within the space of a small volume, the information and argument that the average reader would want concerning the Industrial Court, refute certain misrepresentations that have been circulated, and add, be it ever so little, to the enlightenment which it is hoped will lead to the establishment of similar tribunals by other states and by the Federal Government.

J. H. B.

CONTENTS

CHAPTER		PAGE
I	The Duty of the State and the Industrial Court	1
II	The Coal Strike	28
III	The Making of the Industrial Court	39
IV	The Court at Work	67
V	The Court Approved by the People of Kansas	95
VI	The Right of the State to Adjudicate Industrial Disputes	101
VII	The Proposal to Establish a Federal Industrial Court	121

THE NATIONAL SOCIAL SCIENCE SERIES

The purpose of this series is to furnish for busy men and women a brief but essentially sane and sound discussion of present-day questions. The authors have been chosen with care from men who are in first-hand contact with the materials, and who will bring to the reader the newest phases of the subject.

THE KANSAS COURT OF INDUSTRIAL RELATIONS

CHAPTER I

THE DUTY OF THE STATE AND THE INDUSTRIAL COURT

THE government of the state must protect all the citizens of the state and secure justice for them. It cannot permit organized groups of its citizens to enrich themselves at the expense of other citizens without suffering from this injustice. While to administer perfect justice at all times and to all persons is obviously impossible, the state which permits any injustice which it might prevent is to that extent failing in its duties. So long as men are imperfect some degree of injustice will be practiced among us, but the state that permits injustice to become intolerable will be destroyed. When the people of a state attempt to govern themselves they are all under obligation to help make that state as efficient as possible in securing justice for all persons. Good citizens will not witness injustice without protest.

It is easy for the organized to exploit the unorganized. In the past the few greedy strong have organized and exploited the many

who were unorganized. Now nearly all classes organize; some for selfish purposes, some for unselfish purposes, and some for self-defense. Some of these organizations have conflicting interests, such as capital and labor, and they fight one another. This conflict the state must prevent as a protection to its people.

Just as a well-governed army will not allow its different units to injure one another in any sort of conflict; so a well-governed state will not allow either its soldiers or its citizens to kill or injure one another in any sort of combat. To waste capital, to waste the time of workers, and to waste wealth is an injury to the state which the state should not permit. Dueling by private agreement was long ago forbidden by the state; and the modern industrial conflict which wastes time and wealth and causes useless suffering and injustice must be prevented.

When the owners of the railroads refused the demands of the four brotherhoods and the latter threatened to tie up all the railroads in the country, they threatened to place in peril the lives of millions living in our cities. And when the coal miners struck they imperiled the lives of millions. However, these labor organizations may not have been blameworthy for

threatening to strike or for striking, because, if they merited an increase in wages, and had exhausted all other means of securing consideration, the strike was their only effective weapon. It is not the purpose here, to say who was to blame. At that time no state had yet provided any adequate tribunal before which their case could be heard and adjudicated. In the realm of law and government men are conservative and do not provide new institutions until such are necessary.

It is the purpose of this thesis to show that our industrial life has evolved a complex condition in which there is need for a tribunal to adjudicate industrial disputes; that intervention by state authority is the duty of the state when these industrial conflicts threaten the welfare of large numbers of citizens; that when other means of settlement fail the state is justified in final adjudication of disputes that affect the welfare of the state; and particularly to study the merits of the Kansas Court of Industrial Relations as a tribunal for such adjudication.

This modern industrial situation has come about gradually but in recent decades rapidly. When in the early days each family formed an economic unit living largely within itself, in-

dependent of outside influences, producing nearly all that it consumed and consuming nearly all that it produced, there was no need felt of an Industrial Court. Then about the worst form of waste was war and the chief form of oppression was unjust taxation. Foolish kings, unjust rulers and unnecessary wars were among the worst enemies of the common man. To escape some of these dreaded enemies man threw off the rule of inherited kings and substituted the rule of elected politicians. These elected politicians have not always been wise or just, because many who vote are not wise; nevertheless we prefer the elected ruler.

Notwithstanding all the failures of republican forms of government they are preferable to oligarchies. We are committed to the rule of the majority and will not tolerate a return to the rule of the few. In recent decades we have often found that the selfish few had altogether too much influence in our government. Also the selfish few, when organized, have had too much economic power. The government recognized this fact when it began to enact anti-trust laws and similar measures in the endeavor to curb the growing power of capitalistic organizations.

For two or three decades we have witnessed a constant struggle between the closely organized and powerful *few* on the one hand and the loosely organized *many* on the other hand. For a time men only feared the evil work of the greedy few who held so much power both economic and political. Recently we have learned that large numbers may also organize effectively, and in seeking the interests of those within the organization, may menace all who are not so organized. We can also foresee that if all classes are forced to organize in self defense, we shall have an endless and wasteful war of classes, with no power but government to intervene and to adjudicate the causes of contention.

We do not want government unduly influenced by any selfish class organization. We want government by the *majority,* with the understanding that the majority must be just in dealing with the *minority.* We have seen that the majority can be unjust in its relation to the minority; as when the majority party in power taxes the minority party for a portion of the campaign expenses of the majority and reimburses its campaign contributors from the public funds by means of graft or unjust patronage to partisans.

If we could in any way at all secure a stable government by those of the minority who are most wise and most unselfish, and then be sure of keeping those few wise and benign ones in power, such a government would be better than the rule of the majority in its immediate results; but we have no way of insuring the selection of the most wise and most public spirited minority. We must trust to government by the majority, and depend upon educating the majority to govern themselves and others wisely and justly so that they will not rob the minority.

Now the majority must govern through their chosen representatives and a responsible executive. Here again both in determining the results of an election and in bringing pressure to bear upon those who have been chosen to office, individuals who are organized have a great advantage. Economic organizations have shown a strong tendency to control government in their own interests. This must not be permitted to work injustice to the unorganized. Government by an economic unit must not be substituted for government by the majority. Economic conflicts must not be permitted to waste the wealth of the state or work injustice to any class of citizens. To restrain

such economic units and settle such disputes we need a new tribunal, with power to adjudicate differences between economic units just as the state has adjusted differences between individuals in the past. The right of the state to investigate and adjudicate, to supervise and control will not be questioned by those who understand the nature of the state and the categorical proposition that the state must be supreme in all things that are necessary for the protection of the people and the administration of justice.

To students of law and government it is not necessary to argue for the supremacy of the state or the right of the state to control individual conduct in the interest of society. They know that the sovereignty of the state is axiomatic; that the state cannot exist on any other theory.

However, among those few radical labor leaders and a few employers who at the present time are opposing the Industrial Court here in eastern Kansas, we hear loud declarations that the state has no right to prevent strikes, investigate the terms of a private contract, regulate wages, fix prices, supervise industry or forbid the cessation of production. They forget that the state may find it absolutely neces-

sary to do any or all of these things to save its citizens from gross injustice or even from death itself; and also that it may become necessary for the state to do these things to prevent anarchy from destroying the state. Such individuals are like a certain child, who having heard much about what God forbids and about what the policeman forbids, remarked: "What a good time we could have if it were not for God and the policeman." And as this child forgot the benefits of God and the policeman, so these individuals forget the benefits of the state. They forget that if the state is to perform its function of protection it must have power; and that if they destroy the state there will then be no protection.

For the benefit of such as these we need to teach the true conception of the state and of government.

At the foundation of society we find two ideas: the individuality of man and the organic unity of the race; and in all our thinking on political, economic or social problems we must not lose sight of either one of these ideas. Man is both an individual and a member of society. He is both an individual having the rights of an individual and a member of a living brotherhood having the duties of a

member of the brotherhood — not simply a narrow class or occupational brotherhood but a broad state-wide brotherhood.

Each individual must regard himself as a member of a brotherhood which shall include all the citizens of the state, and hold his own interests as subordinate to the welfare of that brotherhood. The political expression of that brotherhood is government. A true conception of government recognizes the individual and aims to give the fullest opportunity for individual freedom consistent with the common welfare. The individual must have such rights as will enable him to exercise his powers both for wise service and for ethical enjoyment; but the individual can have no rights that conflict with the welfare of the larger brotherhood. When the interests of the individual conflict with the interests of the brotherhood both are to be duly considered in the final adjustment. While the well-being of each individual is important the well-being of the whole brotherhood is more important. The welfare of one is subordinate to the welfare of many. While the individual may not be ruthlessly taken for fuel to warm the brotherhood; nevertheless if the life of the brotherhood is in peril it may be rightly saved by the sacrifice of the

individual. When a sacrifice is necessary it is highly desirable that such sacrifice should be made voluntarily. However, if volunteers are not forthcoming to save the state it may exercise its sovereign power and draft those who are to make the sacrifice. The few are subordinate to the many but the many are under obligation to deal justly with the few. The welfare of all is to be considered at all times.

There is no such thing as a man without a country. Whatever hurts one hurts all to some extent; and whatever benefits one benefits all to some extent. The man who harms the public, or robs the public, or exploits his fellow-men or oppresses his subordinates, also hurts himself in that selfsame act. The man who serves his fellow-men also benefits himself. The state is the political expression of the brotherhood in a certain territory. Government is the institution formed by the state for its protection — that is, for the protection of all its members.

A man is born into a family and in consequence has certain duties toward that family. He has no choice in this matter and though he may ignore these obligations and not perform them they remain his obligations just the same. So a man is born into a state with obligations

as a citizen of the state. He has no choice in this matter. He may perform freely his obligations of citizenship, or he may try to ignore them, nevertheless they are binding upon him all the while. A man may not wish to be regarded as a brother to his fellow-man but the obligation of brotherhood is not thus escaped.

A perfect state would be a perfect brotherhood. We have no perfect state today. A perfect state would administer perfect justice; but such is impossible at the present time. Nevertheless we are under obligation to approach that ideal as nearly as we can, and each individual is under obligation to do his part in the common endeavor to make the state as good as possible.

It is only by regarding himself as in some sense a brother to his fellow-man that an individual can understand his right relations and perform his ethical obligations to his fellow-man; and it is only by regarding the state as a large brotherhood that we can get the right understanding of the functions of the state and wisely play our part as citizens of the state. This understanding of the state leads to peace, harmony, sympathy, community of interest, common endeavor, and happiness. Any other

conception of the state different from this leads to rivalry, destructive competition, conflict of interests, class struggle, strife, waste, and ultimately to anarchy. To be a brother in a brotherhood is the only way of peace. Just in proportion as men act like brothers we have peace, prosperity and progress; while in proportion as men regard one another as competitors we have strife and waste.

The state as the organization of the brotherhood must be supreme in its control of all within the brotherhood. If an organization of men within the state assert that they are superior to the state they have virtually declared war on the state. If they refuse to obey the state they threaten the very life of the state which protects them. They open the way for complete disintegration.

The state cannot surrender its sovereignty to a class within the state. For the state will not be able to accomplish the functions of the state unless it has complete control over all the lives and property within its jurisdiction. Then the essential attribute of the state is sovereignty. There is no limit to the sovereignty of the state. If such were possible, the individual or group of individuals who set the limits to the state would themselves be

greater than the state and the state would cease to exist, having been annihilated by this greater power. The state must have complete and unlimited power over all property and persons in order that it may be adequate to the task of protecting all property and persons and administering justice among all persons.

Every state by its very nature has unlimited and undivided power over every individual subject within its jurisdiction, over every institution that its subjects may establish within its territory, and over every commodity that exists within that territory.

Some say that this is a harsh doctrine and they would like to reject it on the ground that it destroys individual rights and makes a man a slave to his fellow-men. It is not a harsh doctrine to one who wishes to do right. While it seems to make one a slave to his fellow-men, it also seems to make them his slaves; in reality it makes no slaves; but makes all to be servants of all in a brotherhood.

This conception of the state, instead of making men slaves, is necessary for freedom of the right kind. There is no right to do wrong. There can be no ethical freedom to do injustice. The only apparent freedom which the state takes away is not ethical freedom. The indi-

vidual should want no freedom to do wrong, should want no liberty to be unjust. The limitations which the state must set for conduct are necessary for freedom itself. We can only enjoy any rights at all as long as the state protects us in such enjoyment by preventing others from disturbing us in our rightful enjoyments. We can have no liberty at all except that which the state secures for us by its protection, and that protection prevents others from invading our liberty. Within the state we give up the apparent liberty to do wrong in exchange for protection in our real liberty to do right: We give up the *lower* in exchange for the *higher* liberty.

Take away the protection of the state and we have neither freedom nor liberty of any kind; we have only danger and destruction. Take away the sovereignty of the state and we have deprived the state of the power to protect. The speed regulations on the highway limit my right to drive recklessly, but in return it gives me protection to drive in safety. Give me freedom to drive at any speed without limit and others have the freedom to drive so fast as to deprive me of the safe use of the highway at all.

The radical leader of the coal miners' union

declares that the state shall not take away his right to order the miners to shut off our coal supply; and he apparently forgets that by the same mistaken philosophy some other organization could shut off his bread supply, his meat supply, all his supplies, his electric lights, his water supply, and thus destroy him with hunger and thirst within a few days.

If he has a right to cut off our coal supply, then we have a right to cut off his supply of any commodity that we can control. If he has a right to order the miners to quit work, then also have the bakers a right to quit, and also the grocers and the dairymen. But this is all absurd. The firemen have no right to quit on the way to a fire on a windy day when the city is in peril. The engineer has no right to stop his train on the open prairie in order to see how much the passengers will give him to continue the journey. The soldier has no right to strike for higher wages on the eve of battle. What would we think of the postal clerks if they should all strike just the day before Christmas? On the other hand, suppose that these men are really being underpaid and find the strike the only means of securing a just wage? Then we should have some instrumentality of the state to adjust the matter in due time and without

great loss, waste or sacrifice; such an institution is the Kansas Court of Industrial Relations.

And again some conscientious objector says, "Has the state a right to step in and control the actions of men in such cases?" And again we say that the state cannot protect its citizens unless it has unlimited power. To protect persons and property, its power over persons and property must be unlimited. If we would, we cannot escape the conclusion that everything within the territory of the state belongs ultimately to the state and is always under the supreme control of the state; in other words everything belongs to the people and may be used for the welfare of the people. The state may protect an individual in the holding of his property as against all other individuals, but he cannot hold it against the state, for who would give him strength to hold it against the state. The questions are: what is just, what is right, what is best for the general welfare in the long run?

While an individual may rightly hold the product of his labor as against any other individual, how could he hold it against the state, for he depends upon the state for the protection of both his property and himself.

If we think of our rights first we are apt to either forget our duties or not get a clear conception of our duties. If we try to determine our duties without thinking of the welfare of all we are quite sure to have a narrow conception of duty. If we first think wisely of the welfare of all others, then we are in the right attitude to determine our duties toward self and others; and having determined our own *duties* in a broad and generous way, we are then, and not until then, prepared to see something concerning our own *rights*. We need to think much less about our rights and much more about our duties. And we need to think more about our duties to *all* of our fellow-men rather than to limit our duties to those of our own household. We need to get the heart right toward our fellow-men. We need to love our brothers. Even then we shall have differences of opinion and industrial conflicts calling for adjudication. Just here is where we want a tribunal of judgment and authority like the Industrial Court to settle our differences without loss and without fighting.

We must understand the proper function of the state and of government. Some individualists have held that the state should do as little as possible — do only what it must

do — in order to protect its citizens from conflict within and invasion from without. Other persons with more socialistic tendencies have held that the state should take over the ownership and control of all industries and of nearly all social activity. Most persons favor a policy somewhere between these two extremes. Some say that the government should do whatever can be done better by government than by private endeavor. In America today it seems to be the policy of the majority to leave the largest possible freedom for private enterprise with governmental supervision where such supervision is necessary.

How far shall government go in taking over services that might be left to private enterprise; and how far shall government go in the supervision of private enterprises? These questions are with us constantly; and the American method seems to be to answer each question as it arises on its own merits. We hold that whatever the government *can* do much better than private initiative, is something that the government *should* do. We have examples of this in carrying the mails and in maintaining public schools. We also hold that when private business in an essential industry breaks down and fails to serve the

public, then government must take a hand in its own protection. In this case the government may more wisely supervise and adjudicate differences than take over the ownership and management of such industries. This supervision and adjudication is just the function of the Kansas Industrial Court. Those who question the right of the state to do this need a better understanding of the functions of government. What the state may rightly do is determined by the welfare of the whole people.

Concerning any proposed movement one of the primary questions is: how will the welfare of the whole people be affected. Questions concerning state ownership or private ownership with or without state supervision are to be answered in the light of the general welfare. The first question is always: how will it affect the welfare of the larger brotherhood? The moment that state supervision, state control, or state ownership will best serve the welfare of the larger brotherhood, then it is the right of the state to assume the new relationship. Even the right of private property can never be absolute, but is always subject to the welfare of the brotherhood. No person can ever have the right to use his property for the degradation and debasement of the community.

In the case of the compulsory school laws requiring that children either attend the public school or show cause for not doing so, (such cause as sickness or the fact that they are being educated otherwise,) we see that even children do not belong to their parents alone, and are not under the control of their parents alone but are also under the control of the state. In medical inspection, dental inspection, quarantine, vaccination, and health regulations we see that the rights of parents over their children are qualified by regulations for the community welfare.

Every community becomes truly civilized in proportion as it approaches the ideal of a brotherhood and it should do all in its power to realize this ideal in all relationships among its own citizens, and in all its relations with other communities. Just as the rights of any individual man are limited by obligations to his fellow-men, so the rights of any community are limited by obligations to other communities, and the rights of states are limited by obligations to other states. The rights of any community or state are limited by the rights of all humanity.

The duty of the state is not only to *protect* the brotherhood but also to *perfect* the brother-

hood. This is to be accomplished by increase in wealth, in health, in culture and in all the ethical and rightful interests of man. That wealth may be increased; whatever wastes wealth or reduces production is the affair of the state, and whatever can be done to increase production is the duty of the state. Whatever will increase the average of health and working strength is a problem for the state as well as for public-spirited individuals. Also in like manner culture, education, morals, and religion are problems for the state as well as for the individual.

At no time in the past has human freedom been so great as it is now along the most desirable lines. At no time in the past has the individual had such opportunities for the full development of all his powers and such chances for a rational happiness, and yet the supremacy of the state over all human interests was never greater. As the state has increased the range of its activities for the good of its citizens, the citizens have not felt any harmful restrictions at all but have felt increased security in the pursuit of the best.

The right of the state to improve in its work of protecting the individual and promoting the perfection of the brotherhood should

not be questioned, and its endeavors along that line should not be hindered by a mistaken individualism. We should cultivate an attitude of respect for the state and reverence for law and a disposition to obey the law and help to make the laws better, rather than to nullify them. When we nullify the law or hold it in contempt we are blindly hurting ourselves and all other members of the brotherhood. There never has been and never can be any true liberty that does not come *through* law and the observance *of* law. A freedom that knows no law is soon lost in barbarism; but the freedom which the law protects leads to peace and prosperity and true liberty.

The state and law and government are to be reverenced as the guardians of the brotherhood, the guarantors of all legitimate rights, as the protectors of both weak and strong, and the source of all security against disintegration and anarchy. In proportion as each individual shall strive to serve the brotherhood and respect the government and make it better all evils shall be diminished and true freedom and liberty to do right shall prevail, and peace and happiness, and prosperity shall reign supreme.

"New occasions teach new duties," and as new dangers arise the state must provide new

securities for the protection of the brotherhood. The gigantic industrial warfare going on almost constantly at the present time is a new danger to all concerned. For the past two or three decades nearly all states have recognized the need of some instrument of government for protecting their citizens from loss and from harm due to these industrial conflicts. In America we have witnessed anti-trust legislation, committees of investigation, corporation commissions and boards of arbitration. These have all served some useful purpose but all of them alike have failed in most critical hours to prevent conflict and needless waste and positive peril. For some time it has been apparent that some stronger and more effective instrumentality was needed. From this felt need sprang the Kansas Court of Industrial Relations with power not only to investigate and advise and promote arbitration, but also when necessary to adjudicate differences and put an end to warfare. Those who question the right of government to exercise this power should make a more careful study of the true nature and function of government.

A careful consideration of the different theories of government will reveal the true and

the false by the fact that the true theories of government will stand the test of reason and experience, while the false theories will not stand the test of reason and experience. Among the false theories now discarded are the *jure divino* theory or the theory of the divine right of kings. According to this theory government did not rest with the people as a whole, or with any class of people but was divinely given to one who inherited the right to rule. The Scriptures were quoted to support this theory but such an interpretation of the Scriptures was a wrong interpretation. The Scriptures teach just the opposite theory of government.

Another misleading theory is the social-compact theory by which it is supposed that men have agreed to live together under a certain form of government. The small element of truth in this theory is that men have agreed as to the *forms* of their government; but it is not left to men to agree or not as to whether they will have a government. Government is inevitable. Man has no choice in the matter. He cannot agree or refuse to agree to live under a government. Men may change the forms of their governments and in that particular they may agree, but they cannot de-

cide that they will have no government at all. Government is an absolute necessity from which men cannot escape. Government is the inevitable instrument of the state for its protection and is necessary for the life of the state. When Louis XIV said, "I am the state," his expression was wrong, but had he said "I am the government" his expression would have been very near the truth. The people were permitting him to exercise the functions of government but the people themselves were the state and could change the government which they later did.

Another theory of government which has some bearing on the right of the state to establish an industrial court, is the theory that the functions of government shall be limited to protection. While this theory has had a few great advocates like Herbert Spencer, the theory has not been accepted by the states in which we are interested, for these states have added to the duties of protection also, certain functions of service on the ground that the state could perform such services better than could private organizations. Examples are postal services, public education and health supervision.

Even if we were to accept the theory that

the state in its governmental functions should be limited to the duties of protection, we find new perils calling for new forms of protection. We find that the people need to be protected from the results of industrial warfare and that the old fashioned policeman is not empowered to furnish this new protection. This new danger calls for a new type of public servant — some new guardian of the public safety is needed; and the Industrial Court meets the need.

The fact that the law creating the Industrial Court has in it features that are new is no adequate argument against it, for it is designed to meet a new condition and solve a new problem. Every law was at one time new. Some say that we now have too many laws. We cannot well have too many wise laws, for the advancement of civilization is marked by the addition of new laws. The naked savage has but few laws and needs but few, because his wants are few and his relationships to his fellows are few. But just as soon as the simple savage begins to make progress — to accumulate goods and tools and invent new methods — he finds a need for new laws to govern the new relationships. So long as the savage has no private property he needs no

laws concerning private property, but the moment he recognizes private property he feels the need of laws for that new condition. So long as the will of an arbitrary ruler was law, the subject need give himself no concern about laws, but as soon as the power of the king was limited by the establishment of parliaments, laws became the necessary expression of such parliaments, or the expression of the will of the people worded by their elected law makers. The more civilized men are the more laws they find necessary, and the more laws they willingly obey. Every great forward movement in civilization has been marked by the enactment of new laws which were usually at first resented by the conservatives but afterward respected by all.

CHAPTER II

THE COAL STRIKE

IT WILL be remembered that a general coal strike was ordered during the winter of 1919-20. This strike imperiled the public almost immediately. In Kansas, as elsewhere, there was at once a shortage of coal. Homes and hospitals were short of coal. Schools and churches closed. Business houses shortened their hours. Industries were compelled to close causing unmeasured hardship, suffering and losses.

In Kansas the situation was unusually acute. The hostility between the operators and miners was of long standing. Here the miners were one hundred per cent unionized under the dictatorship of Alexander Howat, district president, who was especially rigid in his domination of the miners and caustic in his denunciation of everything against which he could arouse hostile feeling. This situation having existed for some time the feelings of antipathy made compromise or mediation almost impossible.

Because of the frequency of strikes in the

past and the consequent feelings engendered, the Kansas coal fields had come to be known as the "bad lands." During recent years prior to that time, December, 1920, in the Kansas coal fields there had been more than a hundred strikes a year, counting all that had occurred at all the small mines, and the losses to the miners had approximated nearly $1,000,000 a year, for which they had gained almost nothing in return. In 1919 the miners in this district had paid out in dues and assessments more than $150,000, to maintain their organization. The operators made sufficient profits to stand the losses that fell upon them, the miners, because of such frequent strikes, were in constant want and often in poverty, and the public always paid dearly for that private warfare.

About the only measures of amelioration had been provided by the state in the way of safety appliances and in building rescue stations at public expense.

It was the boast of Howat that not one pound of coal would ever be produced in that district except under unionized conditions; and for a number of years no coal had been produced except under the regulations of the union. Unionization was compulsory and the discipline applied to the miners by the union

officials was severe and unrelenting. It was but natural with this state of constant hostilities that all welfare work should be neglected and that housing conditions and living methods should be very bad. Indeed, here where organization was most complete and the union most militant the lot of the laborer was the least desirable of any place in the state of Kansas. It had been so for such a long time that people had ceased to hope for anything better and had come to look upon this most unhappy situation as an unavoidable concomitant of the never-ending warfare between organized capital and unionized labor. If organized labor and the strike could do anything for the good of labor surely they ought to do something good here in the coal fields of Kansas where organization was one hundred per cent, discipline rigid and the strike most frequent. Nevertheless right here the lot of labor was most pitiable and the whole situation most unsatisfactory.

And these were the conditions that prevailed when the freezing public appealed to the Governor and to the Supreme Court of the State to do something to save the people from the peril of suffering and death.

Everywhere the shortage of coal was peril-

ous. The people faced the possibility of freezing in their homes, while the threat that the railroads would stop brought the people of our cities face to face with actual starvation. Both the operators and Howat, the president and absolute ruler of the miners, were more than obdurate, they were adamant, and seemed absolutely unconcerned about the freezing public. In many quarters the suffering was already acute and everywhere the total supply of coal would soon be exhausted.

The Supreme Court was asked to turn over the mines of the state to a receivership as an absolute necessity to save life and prevent further suffering. The Supreme Court granted the petition and the property of the mines was turned over to the state "to operate temporarily for the purpose of meeting the emergency and protecting the public health and safety." Even after the mines had been acquired by the state Governor Allen spent some days trying to persuade the miners to go back and operate the mines; and he promised them that if they would begin work he would see that the wage scale granted by the conference then going on at Washington between operators' and miners' officials should date back to the time that they should go to work. He further assured the

miners that if the operators and miners at Washington failed to make an agreement within a reasonable time, that the state would take up the matter and make an agreement as to wages, and such wages would be retroactive to cover the time the work was done under the direction of the state. The miners' officials tried to prevent the Governor from speaking to the miners by giving out the impression that he would be disturbed and that disorder would result. In that the miners' officials misrepresented the miners. They listened respectfully to the Governor and many wished to return to work but were restrained by their officials.

"If you can get Howat to order us back to work we will be glad to return to work" was the well-nigh unanimous expression of the miners. Howat was in Washington in conference with other leaders. He sent almost daily messages urging the miners not to desert him. Many miners said that they were anxious to work so as to feed their families but that they feared the persecution that would be meted out to them if they disobeyed the officials of the union.

After one week of persuasion and fruitless negotiation the Governor and his advisers were

convinced that the miners' officials would not allow the miners to return to work in time to avert disaster. Then the Governor called for volunteer miners. To this call eleven thousand men responded from Kansas in two days; and in addition many from neighboring states offered their services. Governor Samuel R. McKelvie of Nebraska sent a telegram offering to send fifteen hundred young men to help operate the mines, and called attention to the fact that Nebraska has no mines and was on the verge of great suffering.

Governor Allen came himself to Pittsburg, Kansas, the center of the coal mining region of Kansas, and personally took charge of operations. In this region much of the coal is dug from strip-pits or surface mines and the Governor began operating these first because these mines are comparatively safe for inexperienced men. For this work the Governor chose a sufficient number of very capable and worthy young men, some of them college students, many of them had seen service in the American Expeditionary Force in France. A regiment of the Kansas National Guard was brought along to see that no disorders occurred; and General Leonard A. Wood sent six hundred troops to form an encampment here, and be

ready in the event that they should be needed. The federal troops were not needed. The miners showed very little resentment.

The miners had been told just what would be done if they refused to work the mines, and they had been given every opportunity to return to work under the state. Thoughtful men on the ground say that if the soldiers had not been present there might have been disturbances but with the soldiers present there was not the smallest sign of resistance. As the trains came in bringing the first bodies of volunteer workers, there were gathered at the stations numbers of miners apparently waiting to greet the " strikebreakers " in the usual way but in those instances there was no show of resentment at all. However, these young Kansas volunteers did not look like the usual strike-breakers. They were bright-looking, earnest, clean and kindly-looking men, numbers of them wearing their soldier's uniforms and all looking so worthy that to receive them unkindly would have seemed entirely out of place, and would have cost the strikers the sympathy of all bystanders. These volunteers excited the respect and admiration of all who saw them. The weather was very cold. A strip-pit mine is a cold place when the weather is below zero;

it was bad weather to dig coal, but it was also bad weather to be without coal.

The volunteers went straight to the mines and while the National Guard watched, these volunteers went to work at tasks that were new to them and very difficult for the inexperienced, but they were heroic.

The experienced miners and their friends predicted that these unskilled men could never dig coal, and if they did dig a little it would cost a fabulous price. But they did dig enough coal to tide over the emergency and the cost was not such as to mar the success of the enterprise.

Despite all the dire predictions to the contrary, the experiment of working the mines with volunteers under the Governor was a success. All expenses were paid except the cost of the National Guard, about $70,000, and that may rightly be regarded, not as an expense of mining, but of government or police protection. It was a success because the emergency was met, and had the miners not returned to work the volunteers would have continued to work the mines, with some changes in the persons employed. But when the miners saw that the Governor's volunteers were learning to work the mines successfully, they settled their

difficulties and asked to have their places returned to them. The miners returned to work and the volunteers and soldiers moved away as quickly and as peaceably as they had come.

Onlookers expressed great admiration for the volunteers. Those fine young men were paid $5.70 per day, but they had not asked what the pay was to be, nor did they ask about the hours. They worked from early till late and slept in tents and temporary shelters and ate in the open air in severe weather without complaint, bearing themselves always in a most commendable manner. Something that seems almost providential is that with all the hardships there was almost no sickness, no deaths, and no conflicts between soldiers and civilians.

The soldiers also deported themselves in a way that called forth the admiration of the citizens. Both soldiers and volunteers endured the inclement weather in their tents though many citizens expressed a wish to take them into their more comfortable homes.

The fine spirit of intelligent restraint shown by the young soldiers may be illustrated by the following narrative: One of the mine owners followed the volunteers and soldiers out to his surface mine and protested that such unskilled labor would ruin his machinery, and then pro-

tested more violently when the volunteers took some of his lumber to kindle a fire under the boiler. At this point the owner made some actual bodily interference and the young soldier on guard said kindly but firmly: " We will operate this mine until you start to operate it yourself, so please stand back and do not interfere with the workers." Then the owner stood back and continued his wailing, but offered no physical interference and the soldier, being patient, did not hurt him. Incidents like this gave the people confidence in the volunteers and the soldiers.

A typical instance of the utter disregard of the union officials for the welfare of others is shown in the case of the hospital at Pittsburg, in which there were several hundred sick persons and many of them were union miners. This hospital was just out of coal and the union officials refused to allow any coal to be furnished even though it meant that the fires would go out and many deaths result at once, not a few of them union miners. The Governor's volunteers had to save these lives with the despised " scab coal."

In Pittsburg many of the people are afraid of offending the union laborers, and so they were just a little cautious about giving an open

welcome to the Governor and his volunteers; but the success of the Governor's endeavors, the fine spirit of his volunteers, and the repeated obduracy of the miners' officials and mine owners caused the sentiment to turn toward the Governor and his men. Ten days from the time that Governor Allen began operations the Pittsburg Chamber of Commerce met and passed a resolution endorsing the action of the state; and business men began to talk about a new "declaration of independence" for Pittsburg.

CHAPTER III

THE MAKING OF THE INDUSTRIAL COURT

IN JANUARY 1920, while the state was still operating the coal mines around Pittsburg, Kansas, Governor Allen called the legislature in special session for the purpose of enacting some legislation which would in the future prevent the recurrence of such wasteful industrial methods and protect all concerned against such industrial conflicts.

The Governor made a careful study of the arbitration boards and various industrial tribunals of New Zealand, Australia and Canada which are based upon the general methods of arbitration, and found that neither of these systems adequately met the situation. The leading members of the legislature joined the Governor in making investigations concerning the merits of arbitration and agreed with him that a better basis of settlement must be found than one that depends upon arbitration, either voluntary or compulsory, for arbitration at the best does not consider the welfare of the public. Therefore the method of arbitration was abandoned and the method of adjudication was

selected as a basis upon which to build some institution that should be able to prevent the future break-down of an essential industry.

The people of Kansas as a whole are not so very different from the people of other states. But history and present facts will support the proposition that the governing majority of the people of Kansas are as intelligent and as sanely progressive as those of any state in the Union. We say that this governing majority in Kansas is sanely progressive but not radical or socialistic. When brought face to face with the questions involved they were ready to adopt new measures for the protection of the people, provided such measures could be made safe and practical. The people had suffered from the coal famine and had realized how much worse it might have been had not the Governor dealt with the situation successfully.

Therefore, when the Governor called the legislators together in January, 1920, they were almost unanimous in their convictions that it is the business of government to protect the people against suffering from the need of some essential commodity which may be withheld by some private organization. Those legislators did not show the least antagonism toward either capital or labor as such. They

were too wise to be led at all in the direction of any sort of class antagonism. What they sought was equity for all. Governor Allen in calling the special session had suggested the salient features of the proposed law that would be presented for their consideration so that they were ready for its immediate consideration. Also the suggested law at once aroused some opposition. This opposition came from certain employers who called it "socialism," and from certain labor leaders who called it "a conspiracy against labor." The law is neither socialism nor a conspiracy against labor, but protection for all concerned against the horrors of private industrial warfare.

Before the legislature assembled the law was prepared in conference with the judiciary committees of both the House and the Senate. When the bill was introduced in the House that branch of the legislature thought it a better method to consider it in committee of the whole rather than to refer it to the judiciary committee or to any committee less numerous than the House itself. The Senate referred the bill to its judiciary committee for consideration, while the senators were invited by the House to attend the meetings of the House for the purpose of hearing important advocates

speak both for and against the bill. Thus the bill had the most careful consideration and the opponents of the bill had the most ample opportunity to be heard by both houses. There was absolutely nothing hidden or hasty about the way in which the bill was considered.

Organized labor was represented by a number of national leaders. Their most notable representative, Frank P. Walsh, was their spokesman. He occupied seven hours speaking against the bill and the members gave him the closest possible attention. The opponents of the law were given far the longest time allowance in the debate, and their supporters were present in large numbers to give them psychological backing.

The Governor and the legislature had very little difficulty in agreeing upon certain definite purposes which they desired to accomplish, stated about as follows:

So far as possible, to insure to the people of this state, at all times, an adequate supply of those essential commodities for the life of civilized people.

To prevent the colossal waste which goes with the old-fashioned economic battle — the strike and the lockout.

To make strikes, lockouts, boycotts, and blacklists in essential industries unnecessary, by giving both labor and capital an able and just tribunal in which to settle all controversies.

To stabilize the production of these necessaries, so far as possible, by stabilizing the price to the producer as well as to the consumer.

To insure to labor a more steady employment at a more equitable wage under better working conditions.

To make the law respected and obeyed, and to discourage and ultimately to abolish intimidation and violence as a means for the settlement of industrial disputes.

The measure as it passed may be summed up as follows:

First, provides that the operation of the great industries affecting food, clothing, fuel and transportation is impressed with a public interest and subject to reasonable regulation by the state.

Second, creates a worthy tribunal, vested with power, authority, and jurisdiction, to hear all controversies which may arise and which threaten to hinder or delay or suspend the operation of such industries.

Third, declares it to be the obligation of all persons, firms, corporations, and associations of persons who are engaged in such industries to operate the same with reasonable continuity so that the people of this state may be supplied at all times with the necessaries of life.

Fourth, provides that in all cases of controversy arising between employers and employees, or between different groups of crafts or workers, which may threaten the continuity or the efficiency of such industries and thus the production or the transportation of the necessaries of life, or which may produce an industrial strife or endanger the peaceful operation of such industries, it shall be the duty of such tribunal, on its own initiative or on the complaint of either party, or on the complaint of the Attorney-General, or

on the complaint of citizens, to investigate and determine the controversy and to make an order prescribing rules and regulations, hours of labor, working conditions, and a reasonable minimum wage, which shall thereafter be observed in the conduct of such industries until such time as the parties do agree.

Fifth, provides for the incorporation of unions or associations of workers, recognizing the right of collective bargaining and giving full faith and credit to any and all contracts made in pursuance of such right.

Sixth, provides for the speedy determination of the validity of any such order made by said tribunal in the supreme court of this state without the delay which so often hampers the administration of justice in ordinary cases.

Seventh, declares it unlawful for any firm, corporation or association of persons to delay or suspend the production or transportation of the necessaries of life except upon application to and by order of such tribunal.

Eighth, makes it unlawful for any person, firm, or corporation to discharge or discriminate against any employee because of the participation of such employee in any proceedings before said tribunal.

Ninth, makes it unlawful for any person, firm or corporation engaged in said lines of industry to cease operations for the purpose of limiting production, to affect price, or to avoid any of the provisions of this act, but also provides a proper means by which proper rules and regulations may be formulated by said tribunal providing for the operation of such industries as may be affected by change in season, market condition, or other reason or cause inherent in the nature of the business.

Tenth, declares it unlawful for any person, firm or corporation or for any other association of persons to

violate any of the provisions of the act, or to conspire or confederate with any others to violate any of the provisions of the act, or to intimidate any person, firm or corporation engaged in such industries with the intent to hinder, delay or suspend the operation of such industries, and thus to hinder, delay or suspend the production or transportation of the necessaries of life.

Eleventh, provides penalties by fine or imprisonment or both for persons, firms, corporations or associations of persons wilfully violating the provisions of this act.

Twelfth, makes provision whereby any increase of wages granted to labor by said tribunal shall take effect at the date of the beginning of the investigation.

It is very seldom indeed that any law ever receives so much careful consideration. Many of the leading lawyers of the state were consulted in framing the law, and after seventeen days of deliberation it was passed with only seven votes against it in the Lower House and only four against it in the Senate. In the 1920 primaries some of the men who voted against the law were defeated for re-nomination, and others did not offer for re-nomination. The Senator from Alexander Howat's own district voted against the bill and was defeated by a candidate from Pittsburg who ran on a platform that endorsed the court.

The reader may wish to know what argument was offered against the bill and so we shall quote at some length the speech of its

greatest opponent. We shall also offer shorter quotations from those who spoke for the bill.

Mr. Walsh began his speech against the law with the following diplomatic references to the Kansas constitution:

The state of Kansas is the state of the American Union which more broadly and specifically delivered an invitation of this kind in its constitution than any other state. For in the Bill of Rights contained in the opening clauses of the Constitution of Kansas, the declaration is made that "the people may always peaceably assemble for the purpose of petitioning their representatives concerning their wishes, and for the purpose of communicating their desires to the government of Kansas and any department thereof."

The following are some of the principal sentences and paragraphs in the argument of Mr. Walsh:

Before I conclude my argument I hope to present the thought that the passage of this bill means the destruction, the striking down of the labor movement in Kansas, as it is known in the United States today.

The struggle has not been between those who have and those who have not, but let me mark, if I can, the thought that in modern social and industrial civilization it has been, and is today, between the actual producers of the community and those who live off the actual producers without any proper exercise of their own.

It is true in the history of mankind, aye, it comes from above that no human being can be trusted with arbitrary power. I challenge the whole history of the world, the story of every autocrat that has ruled,

that when he came to the point that nothing was so powerful, nothing strong enough to stand in his way, he fell before the indignation of men through the force of some humble man.

In 1886 many of us living in this country witnessed one of the most terrible strikes that ever took place in the Southwest — the Southwest Railroad strike. At that time I was clerk in the general offices of the Missouri Pacific. Mr. Hoxie was general manager of the Missouri Pacific, and he refused to hear the employees who were struggling to have a hearing. The occupation of a switchman in those days was little above that of a tramp. He got $50 a month, worked twelve or fifteen hours per day and risked his life continually. A gentleman is here protesting against this law who was a conductor running out of Kansas. He can recall the day when his salary was $50 a month. You will recall during those same days — for those were the days before these so-called powerful unions came into existence — that the typographical union was struggling for recognition against the powerful press of this country, the chief strikes being against the Kansas City papers and against the St. Louis *Post Dispatch*. They were making demands upon their employers who declared that they would operate their own business in their own way. The employers refused to meet the men and the strike came on. In the great railroad strike property was destroyed and lives were lost. Timorous men believed that the structure of government was really threatened. So far as those men were concerned they were too weak. They were defeated, so far as the management was concerned at a great cost. Some of them, good men, were blacklisted by every railroad all over the United States. Stockholders lost millions of dollars and the executive management of the road was disintegrated. The strike was a great

loss to the men and a great loss to the state of Missouri.

But let us see. Since that day there has been no railroad representative who has refused to meet any regularly accredited committee of a regularly organized union. Those men, those pioneers, were enabled by that struggle to gain a hearing in the Supreme Court of Industry, and so, while they have not gained all that they believe they should have, the pay of switchmen, of conductors, of engineers has been advanced until those men can take their places as citizens.

The American labor movement is the one body in the United States that acts, not only in its own organization, but also in relation to the public and the state with the greatest degree of altruism. Within their own organization they are banded together so that they will have a better life. I find them side by side, not only giving up their time but also their substance to the community, not only to raise their families but also to perform those duties without which the state must languish and die; so that these men, who at the time of the Southwestern strike, deplorable as it was, were little above the status of slaves because they were held down by economic necessity, are now able to establish decent homes.

The proposed bill is not a new one. It was presented time and again by the legislative bodies of this country and the legislative bodies of Europe. That it contains within its four corners all of the vice without any of the virtue of compulsory arbitration, is my firm conviction. Its object is desirable, the public welfare, the continuance of occupation, etc. But when we go to the *modus operandi* for carrying out that operation, it is absolutely lacking in this bill, and in its essence this bill is a blow at every producer in this state and at every person dependent upon them.

I believe that in its essence it is unconstitutional. The thirteenth amendment to the Constitution of the United States provides that "neither slavery nor involuntary servitude shall exist except in case of crime whereof the party shall have been duly convicted." In passing upon this amendment the Supreme Court said:

"The inciting cause of the thirteenth amendment was the emancipation of the colored race, but its aim was the denunciation of the condition and not simply a favor to a certain race of people."

And as I look for an interpretation of the term involuntary servitude, I cannot do better than to epitomize a decision by the Supreme Court of the United States:

"Involuntary servitude is any control by which the personal service of a human being is disposed of or coerced for the benefit of another."

This does not mean that the man must be absolutely under servitude, so a master can say to him, "You shall not leave here," or "You must leave here," but it is any control by which the personal services are disposed of, of course, without his will, meaning not by the lash of the whip, but coerced by the operation of the state, whether coerced by a majority or by a minority.

The beginning of all genuine liberty starts with the liberation of the producer, giving the actual producer the opportunity to get the fruits of his own toil to the greatest possible extent compatible with the organization of society.

The bill proposed here is couched in language that at first blush, because so much is given to the object of the bill, leads the average person to think that perhaps there must be merit in the bill. When I came to analyze it in all its provisions, and I can speak here now not only in the representations which I hold here,

but also as an investor in your state — I can also speak as a man of family — from that standpoint I can say this bill, from the conception which I have of American citizenship and the progress of our people, is absolutely at war with our spirit.

I believe in the greatest expression of individualism. I believe that those things which the absolute necessity of the community demands should be operated by the state, or by the municipality, but that every possible freedom should be given to human freedom and human ingenuity and human activity, and that goes to the very heart of this question which I am trying to discuss here today. You cannot look upon the labor of a human being as a commodity. You cannot look upon it as being subject to contract, such as capital is, or such as the fruits of labor, for the fruits of labor are dead material; but you must look at it as human life. You cannot barter away or contract for the creative impulse; you cannot contract or barter away the aspiration that a man has for contact with his own family; you cannot contract for life, the laughter and the tears, the joys and the sorrows of human beings, or the efforts of human beings to make the world more beautiful and to advance the race.

In order to continue production this Industrial Court which it is proposed to have appointed by the Governor of this state is empowered to fix rules, regulations and practices to govern the operation of industry. I say it to you, gentlemen, and I say it deliberately, it is in Section 16:

"After notice to all interested parties, and investigation, as herein provided, to make orders fixing rules, regulations and practices, to govern the operation of such industries, employments, utilities or common carriers, for the purpose of securing the best service to the public consistent with the rights of employers and

employees engaged in such industries, employments, utilities or common carriers."

They have the right then under Section 16 to order and fix rules, regulations and practices, to govern the operation of industry.

Now this is no new idea. I am going to lay this thing down as a fundamental proposition on Section 16, and I challenge an investigation of the operation of such law in Germany and other places where it has been tried, and in the researches of students throughout all history, if that is not state socialism in its most odious form, and it is not the first time it has been tried. It is the idea that the state, in order to conserve the public welfare, may take charge of the actual operations and activities in production and industry and operate them itself.

All the great strikes in history where there has been loss of life and property have been those where men, like in Youngstown, Ohio, lived under conditions so horrible, and like the men did in Chicago, where without leadership, without thought, they struggled to one place and they voiced their feeling of awful suffering and degradation, without proper leadership and unadvised, many of them unfamiliar with our institutions, they rose up; and it cost the loss of life and property in their efforts to get together so that they might be heard.

I say to you, gentlemen of this assembly, with all the feeling that I am able to muster, that there would not have been an industrial dispute worthy of the name in this country causing the loss of life or property, if men recognized the rights of each other; recognized that there could be no mastery in industry if the cooperative process was employed; recognized that if the employer was not just he would suffer and that if the men did not keep continuously in employment their

families would suffer; because they would have no employment. And if the employer, exercising as he does in every state in the union, the free right of collective bargaining, had recognized the right of the men to organize and bargain through their representatives, with the idea that there was no mastery, but that there was cooperation — the country would have gone on, generation after generation, without any labor dispute.

Is it desirable to have labor unions? If it is, do not pass this law, because by passing it you strike down every labor union in the state of Kansas, and you draw a steel ring around your borders which says that labor unions cannot come in. The object that you give for Section 17 is a good object; that production shall not be hindered or delayed, that the public shall not be made to suffer on that account; and therefore certain things are made illegal. Now let us understand, if we may, the question of strike or no strike. The terminology is unfortunate. The word strike implies effort — violence, but it is only the right of the individual to quit work. No one would gainsay the right of the laborer to quit work or to say to his brother: "We are being imposed upon, we are not getting enough to eat, we are building up an immense fortune for this man, we do not ask much but we shall ask a minimum wage," no man could object to that.

I do not know a gentleman in this assembly that does object to it. There is continuous annual operation in some of these great concerns where hundreds and thousands of men work twelve hours per day. You cannot believe it and I did not until I was brought face to face with it. Do these men not feel imposed upon when they see their children and their wives and their fellow workers suffering? They will say to one another: "This concern made a profit during the war of five hundred per cent and here we are suffering with want, let us meet and present our complaints."

Would any man in this assembly deny them that right?

At the conclusion of Mr. Walsh's speech the members of the legislature asked him many questions in a kindly way that manifested respectful interest and open-minded fairness. Mr. Walsh was given an entire day for his speech and the discussion which he led, and through it all he was treated with deference and heard with the greatest consideration.

The next speaker against the law was Mr. J. I. Sheppard, attorney for the Kansas Federation of Labor. He has a kindly appearance and is often affectionately called "Uncle Jake." He too was heard with patience and open-minded respect. He spoke of the hardships of labor in general and particularly of the miners. He pleaded for a spirit of brotherhood and the recognition of the teachings of Jesus in our industrial life. He declared himself against strikes and said that we should find a substitute for them. He did not claim that similar legislation had been attempted in European countries. He saw in the proposed law a high purpose and advocated its enactment without the penalty clause. He went so far as to commend the Governor's activities in the coal strike.

The next speaker after Mr. Sheppard was Judge W. L. Huggins, one of the men who helped to frame the bill, and who has been, from the beginning, the presiding officer of the Kansas Court of Industrial Relations. Herewith are some of the extracts from the report of his speech:

With the first speaker I was a little disappointed. I think that it can be inferred from what he said that he wanted to praise the government under which we live; that he wanted us to stand by and support the government of Kansas; that he believed in this legislature and in organized government; and that his first duty as a citizen was to the government. But I don't believe that he said it as plainly as I would like to have it said, because when asked from the floor: "Do you approve of the methods by which the four brotherhoods forced the Adamson Law through Congress?" he answered that he did approve of those methods. If you lawyer-members have not read you will read Chief Justice White's opinion in which he bases the constitutionality of that law almost wholly upon the fact that Congress was compelled to do just what they did to prevent a nation-wide strike which would have paralyzed industry and brought suffering to every home in this land. Is that government by the majority? Is that democracy? Is that government *of* all the people *by* all the people *for* all the people?

Then again he was asked the question: "Do you stand for the methods adopted by the striking miners in Kansas when they refused to respond to the call of the Governor and refused to permit coal to be produced in the face of an actual shortage, severe

winter weather and actual suffering?" And he said he did.

I have been asked by several members of this legislature a question about this bill and I want to answer that question. In fact that question concerns a certain point in this bill which has not even been mentioned in this discussion.

What does this bill offer to labor? In the first place it offers a tribunal before which labor can go with any grievance which labor may have — that is, labor in any of the industries described, and when labor approaches that tribunal nobody can say, "Where is your bond for costs?" The poorest laborer in Kansas can walk into this tribunal with his pockets empty as the poorest man on earth and be heard. And further than that, as the matter proceeds, the state of Kansas provides that poor laborer with expert advice and expert assistance; it allows him to go wherever it may be necessary that he should go, to take every bit of evidence that he wants to take without his employing an attorney, without paying a dollar for traveling expenses or without his employing expert help of any kind. The state of Kansas says to him, "We will get your evidence for you," and thereupon, with a staff of well paid and well chosen experts it takes up his case for him and investigates his case for him and develops his case for him free of costs.

Now the state does more than that. When the matter comes up for trial before this proposed tribunal, the state arranges matters so that the laborer does not have to bring any sort of a lawyer into that court. There is a staff engaged by the state to develop all the facts; and this bill enjoins this tribunal to do all the things necessary to develop the facts and the truth of the case. So the laborer comes into court protected by this law and simply offers his testimony and sub-

mits his case, and the state investigates his case and secures justice for him without cost to him.

And an additional thing is also done for him. The bill provides that the evidence shall be taken in shorthand by a reporter paid by the state, and that the record shall be transcribed in duplicate, one copy of which shall be filed with the permanent records of this Court and the other shall be used in the Supreme Court of the state of Kansas. So if the poor laboring man concluded that he has not received justice in the Court of Industrial Relations, his case is prepared for him and he goes up to the Supreme Court — the best court in the state of Kansas, and as good a court as any in the United States of America — without costs and without having to put up any security for costs.

It is intended to mean that any employee can quit his employment at any time for a lawful purpose, but that if he conspires and confederates with others to quit it must be for a lawful purpose and not for an unlawful purpose. There is nothing in the bill that prevents labor from holding a meeting in a hall to discuss its wrongs. There is not a line in this bill that penalizes a man for attending such a meeting. It is admitted here that that coal strike was called for the purpose of so afflicting the people of this state that they would compel the coal operators to do something that they did not want to do. Labor, by that coal strike, made hostages of the people of Kansas. Does this law make a labor union unlawful in Kansas? I say, *No*. Every honest labor union, every labor union that is composed of loyal, upright American citizens who are willing to abide by the laws of the land in which they live, may continue its work.

I will not debate with any man the question of obedience to the law of the land. That is not debatable. Loyal, patriotic citizens will obey the law from

choice and the other kind will be compelled to obey it. All this talk about inability to enforce the law in Kansas is nonsense, gentlemen. This is a land of law and order and when this law is enacted it will be enforced; and as the gentleman from Chautauqua County says: "If it is necessary to enforce it by a penalty, the penalty ought to be somewhere where it could be reached." I am raising a family, and I am the oldest son of a large family, and I was taught the Golden Rule and the Ten Commandments, and the Sermon on the Mount. I believe in all those things; but in the same book that gives us the Golden Rule and the Ten Commandments and the Sermon on the Mount is a passage which an old Baptist friend of mine, who believes strongly in immersion, used often quote to this effect, "Whosoever believeth and is baptised shall be saved, but whosoever believeth not shall be damned." That is the penalty.

This legislature has always been fair to labor, and I believe that if Uncle Jake Sheppard had thought of it he would have told you so in his speech. Labor has been before this legislature from time to time, and we have our mine inspection laws, our labor laws, our safety appliance acts, our workmen's compensation act, our welfare commission, and so far as I know no fair law asked for by labor has ever been denied to them.

Now is this an anti-strike bill? It certainly is not, and it is wrong to call it so. At least it is not an anti-strike bill in the sense in which they call it such. It does not prevent any man or set of men from leaving their work. It does say that when you quit, you quit. When you quit your employment you leave your job alone. And when you quit if someone else wants to come and work in the place that you left you have no right to prevent him from doing it. No

man is required to work at any particular work at any particular time unless he wants to do so. The idea that the state of Kansas would seriously consider any sort of bill for the enslavement of any working man! It is absurd. You would have thrown it out of the window the first morning; you would not have allowed it to be read the second time, if a syllable of it had hinted at anything like slavery for any working man.

Now the question arises; can you enforce the order provided for in this bill? I believe that it can be done and I base my opinion not altogether upon adjudicated cases. I base it primarily upon this fact, and I believe that every man present will admit that it is a fact, that in every Anglo-Saxon country in the world, every government (this is an Anglo-Saxon country because our laws and institutions are founded upon the English Common Law) every permanent addition to the body of the laws has grown out of some great public necessity.

In Anglo-Saxon countries the law springs from the common level of the general public. In our country it comes from the bottom and springs up, and every permanent law takes root in human necessity as the tree takes root in the soil. Let me illustrate briefly. Two hundred and fifty years ago, Sir Matthew Hale, one of the greatest judges of England, for a time Lord Chief Justice, wrote a paragraph concerning public use of certain facilities for meeting men's needs, which is as follows: "If the King himself (mark he said if the *King himself*) is the owner of a public wharf to which all persons must come to unload their goods, even the King shall not make excessive charges because the wharf and the loading facilities are public utilities, and are no longer to be regarded as merely private property." That was a long time ago, but

that has been the law in every English speaking country ever since. It has never been abandoned. We have extended the principle — extended it in Kansas a good many years ago when we created the Railroad Board; extended it when we created the Public Utilities Act; so that we have fixed the prices which the public must pay for these things, and we have compelled the continuance of service; compelled the railroads to run their trains — to run continuously; have not allowed a road to take off a freight train to boost the rates for freight; have forbidden electric light plants to shut down their service.

In this bill we are stepping out a bit further and saying that not only shall the railroads be compelled to furnish service — not only shall the electric light company be compelled to furnish service — and the water company — and the telephone company — but also because of the very necessities of the case, the people must also have food, clothing and fuel. Therefore we say to the concerns that furnish these necessities, "You shall not cease operations and let the people go hungry. You shall not cease operations and let the people freeze."

But what kind of government did they set up down in the mining district last fall to induce Frank Walsh to say: "My first duty is to the union." I do not know whether he would admit that he had any duty to the state — he said: "My first duty is to the union." In principle that is Bolshevism, and I am not afraid to call it by its right name. What is the matter with radical labor? The radical leaders have tainted it with Bolshevism. Ideas from Russia have got into the radical element of labor while the loyal element of labor remains inarticulate.

Everybody claims to be the friend of labor. I am not going to parade myself as a special friend of labor.

Nevertheless I am a sincere friend, and as such I want to offer a little advice to labor. Put out the radicals, and if you can't do that, then come out from among them.

Here is a bill that attempts to remedy a great abuse. Now I am not going to tell you that it will bring about the millennium, but if this bill becomes a law it puts into effect the very best force that the state can furnish, free of cost to the laboring man, to investigate and adjudicate all those wrongs from which he has been suffering these many years—a bill which provides for the very thing that Uncle Jake Sheppard and Frank Walsh were talking about, and which they hoped to have brought about by arbitration and conciliation within the industry. There is not a line, a word or a syllable in this bill to prevent laborers from getting together like Uncle Jake told you about this morning. I do not know why he told you that, unless he was preaching a sermon, for it has nothing to do with this bill. There is nothing in this bill to prevent labor and the employer from getting together on any sort of agreement that they want to make. And in fact there is a strong urge in this bill to induce them to get together. You lawyers know how many disputes are settled out of court because the parties do not want to pay a lawyer. In fact, I never found anybody who *did* want to pay a lawyer. People in general do not want to get into court to waste money on litigation and so they get together and settle their differences.

When a dispute comes up between employers and employees in some of these industries, there are mighty good reasons why the employers do not want to go into this court, because every book and letter file will become objects of inspection and made a matter of public record. Now if employers have anything that they do not want the public to know they will get to-

gether with labor and come to an agreement, because they will not want a hearing before this court. So to avoid litigation they will agree upon a manner of the adjustment of differences.

They will appoint their working committees, and thus, without any litigation, labor will get its rights and capital will go on producing the goods that are necessary for human life and all will go smoothly. Without the court there is no such motive for compromise and conciliation. So I say that this law, while it will not produce the millennium, will encourage all those methods of arbitration and agreement which have been advocated by Mr. Walsh and the eloquent speaker this morning.

You have no right to take away the laboring man's right to strike unless you give him a better remedy. You have no right to take away the laboring man's only weapon unless you give him a better one.

For a while I lived in a community in which it was necessary to carry a revolver. I did not like it very well, but I carried one because the law did not protect me. It was down in Mexico where they had no law. Now here in Kansas we have passed a law forbidding the carrying of concealed weapons because we have provided better protection in our courts. Because we have never given labor a better protection we have allowed labor to carry a gun — the right to strike — and do not take it away until you give him something better. Now *you* are offering labor a better weapon which makes the old one unnecessary. You are offering labor a legal tribunal composed of impartial judges, and all the machinery necessary to insure free- and even-handed justice, with power to enforce against the employers fair wages, fair hours, fair conditions, and good moral and healthful conditions while engaged in labor. The bill says all that in so many words.

And when you have given labor the better weapon, the court, and have given it the protection of law, you have the same right to take away the old weapon of the strike, that you had to take away from the individual the right to carry concealed weapons when you protected him by law. And when you have done this you have gone further toward the establishment of industrial peace; you have gone further to insure labor a fair reward; you have gone further to insure to every laboring man the right and the ability to live comfortably, educate his children, and bring them up in good moral and healthy surroundings than any other state or nation has ever done since civilization began. And Kansas has again led the world in progress.

Any man who says my first duty is to my union — I owe no allegiance to the state of Kansas or to the United States which I shall not disregard if my union tells me to do so — no man who believes in that is a good citizen. No man who acts in that manner should be granted the protection of the law which he despises.

William Allen White, the well-known author and newspaper man, spoke for the public. He revealed the wonderful sanity of his philosophy, which is the greatest good to the greatest number and justice to all. After reviewing the evolution of government supervision over private affairs and private quarrels he said in part:

In ten years labor unions will look back to this step of the Kansas legislature as the day that heralded the emancipation of American labor.

As civilization grows, it grows more complex. Civilization is the constant enlargement from the more

simple form to the more complicated form, and it will never return to the simpler form. Today we are taking in Kansas a step which must be taken throughout the world. To affect with public use all those interests which are concerned with productive industry, we are, in effect, making them public utilities.

Every age, every century, and in these modern times every decade, sees some interest or business formerly considered private business or private interest set over in the public interest. Two hundred years ago when a gentleman had a quarrel with another gentleman it was supposed to be a private quarrel which should be settled under a private code called dueling, but too many innocent bystanders got hurt and dueling was stopped in the interest of the public. Time was when a quarrel between a slave and his master was a private quarrel and the master had private rights over his slave. That was stopped. Time was when a man's money invested in bank stocks or in railroads was considered private money, and it was considered an infringement of private rights to interfere with that money, but government affected all moneys invested in banks and public utilities with a public interest, and regulated and controlled that money in the interest of the public and took away personal rights for the public good.

The pirate's right to rob on the high seas was once a private right but government took away that right for the public good. And when capital and labor engage in a brawl which threatens the daily processes of civilization, we are taking away the right to that brawl and saying that it must be settled in the public interest.

The public in establishing wages will be interested in labor, not as a commodity, but in the laborer as a citizen. The public is interested in capital chiefly to see that capital gets justice; that it has a fair return suf-

ficient to encourage enterprise, which is our God-given gift which distinguishes America from all the world. And by trusting to the public — that is trusting to organized society expressed in government — capital will find a court of justice for its protection; and ten years from now capital will regard this day as the beginning of a new era of security in its organization. We are not trying to throttle capital or labor but to emancipate them from their strangle-hold upon each other and to establish an equitable and just living relation between them.

One hears the question: "What about disputes between employers and employees engaged in non-essential industries?" One of the provisions of the law is, that these may by common agreement appeal to the court for the settlement of their controversies, and the decision when rendered in a voluntary appeal becomes binding as though it were rendered in the case of an essential industry.

The critics of the court have said that the court should be chosen by popular vote rather than to be appointed, as they now are, by the Governor. They say that it makes it possible for the Governor to use this power as a means of building up a machine and of favoring his partisan supporters at the expense of his enemies or at the expense of the state. While such a thing is possible, all instrumentalities of government may possibly be turned to private

account by unscrupulous officials. It is the duty of watchful good citizens to see that government is not so perverted. All are satisfied with our present constitutional plan whereby the President of the United States appoints his cabinet, because we expect to hold the President responsible for the success of his administration; and so the Governor, if he is to be held responsible for the success of his administration, should have the power to appoint to some extent those who will determine the success of his administration. It has been well determined in our American states that certain servants of the state should be appointed rather than elected in order to secure men with special qualifications for duties requiring a high degree of technical skill.

Certainly the judges of the Court ought to be most carefully selected with reference to their peculiar fitness for this very difficult work. Popular election is apt to bring to the front some popular individual — some man whose personality or work has made a popular appeal — but popular election is not at all most likely to select the best fitted man for some position calling for peculiar skill and highly specialized qualifications, such as should be found in the members of the Court.

If the judges of the Court were to be chosen by popular election there is every probability that capital and labor would wage their conflict around the means of nomination and election. We might tend to have a capitalist party and a labor party; or a miner's party and a farmer's party or other industrial divisions endeavoring to determine the choice of a judge who would be elected under some obligation to his supporters. The judges should be appointed by the Governor of the whole people that they may serve the whole people. Public sentiment should be such that the Governor's choice for a place on the Court would be above suspicion of class prejudice, and chosen because of broad sympathies, wise public spirit and special fitness.

In Kansas the judges are appointed with overlapping terms so that no one Governor can shape the Court to his own will. The Governor is responsive to the will of all the people of the state and that should be sufficient. Another safeguard is in the fact that an appeal may be taken to the Supreme Court of the state, and that Court is responsible for their decisions.

CHAPTER IV

THE COURT AT WORK

THE first case to be formally adjudicated by the Kansas Court of Industrial Relations was that concerning the Topeka Edison Company which is engaged in furnishing necessary electric current. The case was brought into the Court by the International Brotherhood of Electrical Workers. After investigating the wages of like workers elsewhere, the skill required, the hazard of the tasks, living costs, etc., the Court granted the employees an increase in wages.

The second case was that of the employees of the Joplin and Pittsburg Railway Company who were granted an increase after investigation. In the third case the Linemen of the J. and P. Railway were granted an increase after full investigation.

Then came the case of the Train Dispatchers who were not granted increase. The next three cases were: The Foremen of Trackmen, The Substation Operators, and The Trackmen, all of whom were granted increases in wages.

Next was the case of Vandenburg *et al* versus Wichita Railway and Light Company, affecting a large number of street railway employees. After the usual investigation of all the factors involved, an increase in wages was granted.

In the next case, A. G. Weide *et al* versus Kansas Flour Mills Co., at Great Bend, the Court issued findings and rulings on the working conditions. In all these cases the rulings of the Court were accepted by both parties.

After investigation, increased wages were allowed to the employees of the Topeka Railway Company. Also an increase in wages was ordered in the case of E. H. Sowers versus Atchison Railway Light and Power Co. A. H. Martin *et al* versus Santa Fe and Union Pacific Railway companies, was dismissed on account of Federal Labor Board award. J. W. Arendt *et al.*, Goodland, versus Rock Island Railway, resulted in working conditions being improved by agreement of the parties.

In this last mentioned case the settlement remedied a condition of thirteen years' standing. The case concerned some Rock Island car shops at Goodland that have stood open for thirteen years, thus exposing the workers to cold and inclement weather. The attention

of the United States Railroad Commission was called to it without remedy. A defect in the old law concerning such cases made it impossible to secure a remedy. In the summer of 1920, the Industrial Court ordered that the shops be enclosed as a protection to the workers and they have since been enclosed.

One case, to which many references have been made, is that of the Stationary Firemen and Oilers. The opinion, filed June 15, 1920, contains some interesting materials. The Court found that some of the workers were not getting a wage large enough to support their families. In view of a possible conflict with the Federal Transportation Act of 1920, the order of the Court was made temporary in its nature and only meant to be enforceable until the parties may agree, and is provided for the protection of the general public against the inconvenience and hardships that may result from industrial warfare. The decision, a part of which is hereafter quoted, shows how the Court met the emergency and provided for the protection of the public from impending suffering such as would have resulted from the suspension of services.

The following is quoted from the decision:

From the evidence in this case it seems to the

Court plain that there is a material controversy, and that there is danger that such controversy may terminate in a cessation of work on the part of a large number of complainants, which cessation might result very seriously to the public. It is argued that the men will not strike because the Kansas law makes the strike unlawful. Nevertheless, the Kansas law recognizes the right of these men to quit their employment at any time, and the situation is such that large numbers may become disgusted with their wages and the conditions under which they work, and be justified in quitting at any time. These men are required to work seven days in the week in order to earn sufficient wages to support their families even scantily. The evidence shows a state of facts which would unquestionably warrant this Court in taking jurisdiction in order to preserve the public peace, protect the public health, and promote the general welfare.

For the purpose of improving housing conditions and promoting other measures for the welfare of workers, the Court has made surveys of some of the principal industrial centers of the state. In pursuance of the law under which it was created, and supported by public sentiment, the Court is doing good things for laborers, and for the public; and is planning to continue doing good things in the future, both for laborers and for the public.

Governor Allen gives a vivid picture which illustrates how the Court secures justice for those who cannot secure justice for themselves.

A man with a peg leg, dressed in faded and greasy blue overalls, stood before the Kansas Industrial Court one day in the summer of 1920. He was a plaintiff in the case of the Stationary Firemen and Oilers, and his duties were those of tender at a turntable. He had a wife and six children, he said, and had been getting $97 a month — equivalent to about $45 a month before the war. It seemed that the railroad brotherhoods had not included him or his union in any of their efforts to secure higher wages or better working conditions. He testified that he worked seven days a week and that when he came home at night he would help his wife do the washing which they solicited to help keep starvation away. Upon close questioning he told some other startling facts. It was not unusual, he said, for him to take home a large part of his noonday lunch which his wife had put up for him, and put it back surreptitiously with the other food at night so that the children might have enough. And then he would start in at nightfall and help get out a washing. This laborer was given an increase of more than thirty per cent. He belonged to a large and important class of railway labor for which the four brotherhoods have done nothing.

The presiding judge of the Industrial Court told these things, among other incidents of the kind, to a friend one day, who got up from his chair and paced back and forth. Once his voice stopped and he went over to the window and stood for a long time saying nothing. He is rather phlegmatic — some call him cold and some say that he is partial to corporations. Suddenly he turned and almost shouted as men do when they wish to conceal their emotions: "This is more than a law; it's more like gospel. If the people would only understand it. Why, this is more than safety to the public. It means justice in such matters, to a man who has never had a chance to get justice before."

That conservative elements of organized labor understand and approve the Court is shown by the fact that during the first few months of its operation about fifteen petitions were filed with the Court by members of union labor in various industries, mining, milling, packing, and power industries. Three-fourths of these petitions were investigated and disposed of before August 1, 1920.

In at least twelve cases involving wages, the decisions of the court have increased wages, and all the decisions but one have been accepted with sympathetic cooperation on the part of both the laborers and the employers.

The one exception is that of the Stationary Firemen and Oilers, in which case the Court awarded an increase in wages of approximately thirty per cent, and allowed the men time-and-a-half for Sunday work. The employing railway appealed from the decision of the Court in this case on the ground that the federal government had established the Federal Wage Board for railway crafts, and that the Kansas Court had no jurisdiction. When the Federal Wage Board rendered its decision affecting wages in this case, its award in wages was almost the same as that of the Kansas Court, being only about three per cent less, and the

Federal Board gave no recognition of the claim for a larger wage for Sunday employment. Mr. H. W. Wendele, who is one of the vice-presidents for the International Brotherhood of Firemen and Oilers and also vice-president for Kansas of the American Federation of Labor, was the man who brought this case into the Court, and he afterward made a public statement in which he said that he regarded the award by the Kansas Court as a more just recognition of the rights of his craft than the decision of the Federal Wage Board.

The case for the members of the Amalgamated Association of Street and Electric Railway Employees of America against the Joplin and Pittsburg Railway Company was brought into the court by W. E. Freeman who is president of the Kansas Federation of Labor. The Court, after investigation, awarded increases to the different lines of work ranging from nine per cent to thirty per cent, and these increases were paid by the employers. Both the operators and the workers expressed satisfaction with the award of the Court. This case attracted no small amount of favorable attention because all parties concerned, including the public, well remember that during the last three years there have been two destructive

strikes on the part of the employees of this railway. One of these strikes lasted three months and involved immense loss to the company, to the men and to the commercial interests of the community, as well as causing serious inconvenience and loss to the traveling public.

Judge W. L. Huggins, the presiding judge of the Court, in rendering this decision exhibited the benign spirit of the institution in his discussion of a living wage. He said, in part:

A living wage may be defined as a wage which enables the worker to supply himself, and those absolutely dependent upon him, with sufficient food to maintain life and health, with a shelter from the inclemencies of the weather, with sufficient clothing to protect the body from cold, and to enable persons to mingle among their fellows in such ways as may be necessary for the preservation of life. But it is not merely a living wage only which this Court is commanded by the people of this state to assure workers engaged in these essential industries.

After reviewing the different lines of work recognized in the verdict and endeavoring to evaluate their services the Judge continued:

Such persons, in all fairness, are entitled to a wage which will enable them to procure for themselves and their families all the necessaries and a reasonable share of the comforts of life. They are entitled to a wage

which will enable them, by industry and economy, not only to supply themselves with reasonable opportunities for intellectual advancement and reasonable recreation, but also to enable the parents, working together, to furnish to the children ample opportunities for intellectual and moral advancement, for education, and for an equal opportunity in the race of life. A fair wage will also allow the frugal man to provide reasonably for sickness and old age.

The Court also, in a similar case, granted an increase ranging from ten to fifteen cents per hour to the employees of the Topeka Electric Railway. This case was also brought by union officials and the award was accepted by both parties.

What a striking contrast between these peaceable and satisfactory adjustments securing increased wages without loss of time, in comparison with the terrible experience of the city of Denver, where a devastating strike was called causing the loss of several lives, and of millions of dollars to the operators, the employees and the public.

Since the Court has been demonstrating its usefulness, there has been apparently a constant increase in the number of laboring men who give it their approval. While certain labor leaders, herein mentioned, have brought cases before the Court and been pleased with the resulting verdicts; and while no labor lead-

ers appear to be displeased who have brought their cases to the Court; it is nevertheless true, however strange, that some other labor leaders still violently oppose the existence of the Court, though they seem to have no valid reason for such opposition. When they are invited to express their reason for being hostile to the Court, their replies have too often been mere vituperation and profanity. Such reasons as they have voiced will be given respectful attention in Chapter VI.

As laborers become informed they increase their confidence in the Court. This is shown in the coal-mining district of southeast Kansas where Alexander Howat has lost some of his prestige because of his unreasoning fight against the Court.

After the Court was established some of the coal miners, living under Howat's jurisdiction, made an appeal to the Court to investigate some of their complaints, and immediately Howat called together his particular followers among the United Miners of his district, misrepresented the purpose of the Court to them, and induced them to amend the constitution of the organization so as to provide that thereafter any miner who should take his complaint to the Court of Industrial Relations should be

fined $50 by his union for making such appeal to the Industrial Court; and also any local union or official who should make such appeal to the Court should be fined $500. This extraordinary and most unwise bit of defiance Howat was able to induce the miners of his district to approve because a large majority of them are of foreign nationality, unable to read what is going on in the state, and he had built up a strong prestige among them by appealing to prejudices and class spirit.

These miners had real grievances which the Court would surely have remedied just as soon as the cases could be investigated, and judging from experience, one is entirely justified in saying that remedy from the Court's verdicts would have come earlier and surer than from any other source. Those who are in a position to express sane judgment about the matter say that Howat did not wish the miners to get benefits from the Court, but wished instead to have the miners regard himself as the only agency for the betterment of their conditions.

This effort of Howat to set the Court at naught and annul the laws of Kansas the Court met by instructing the operators not to pay, under the check-off system, any of the fines

which Howat might assess under the new provisions of the Mine Workers' constitution. Notwithstanding Howat's attitude some of the miners brought a case before the Court complaining against the operators under whom they were working. Howat was called and refused to testify before the Court, stating that his refusal was because he did not recognize the legality of the Court. Thereupon the district court of Crawford County ordered Howat to testify and when he again refused the district court sent him to the county jail.

Howat appealed to the supreme court of the state to test the constitutionality of the law and was released from jail on the appeal bond. The supreme court of the state of Kansas held the law establishing the Industrial Court to be constitutional and Howat prepared an appeal to the Supreme Court of the United States. Howat threatened to call a strike and the Court granted an injunction forbidding him to do that.

Howat continued his activities in defiance of the Court, and the Court was patient, long-suffering and kind, but finally, September 30, 1921, he went to jail at Columbus, Cherokee County, Kansas, rather than obey the laws of Kansas concerning the Industrial Court.

The Kansas City Times in an editorial entitled, *Why Howat Goes to Jail,* Saturday, October 1, 1921, states the position of that widely known and highly reputable daily in a way that is in accord with the belief of many thoughtful citizens concerning the futility and unwisdom of Howat's viewpoint. This is the editorial:

Alexander Howat and August Dorchy, president and vice-president of the coal miners' union for the Kansas district, went to jail at Columbus yesterday to serve a six months' sentence rather than to give a bond for the observance of the Industrial Court law.

Mr. Howat and Mr. Dorchy may appear as heroes in the eyes of the radical leaders who are behind them in their fight against the laws of Kansas, but if they imagine they are making an impression upon the people of the state who have indorsed the law, they are certain to waste about six months of time which might be utilized by them for some useful purposes.

Howat and Dorchy are going to jail for disobeying the Industrial Court law in what is known as the Mishmash case. The action they are taking in defying the law will serve only to call attention to the specific detail of the law which they violated, and nothing could be more detrimental to their cause. For the Mishmash case is one that emphasizes to intelligent men the wisdom of the Industrial Court law and the justification for its adoption and maintenance from the standpoint of protection for the public, against the unreasonable attitude of labor and employers in industrial strife.

The Mishmash case was one about which Howat, representing the union, and the organization of em-

ployers in the district quarreled for three years. All that was involved was the age of Karl Mishmash, a minor. The operator for whom Mishmash worked said that Mishmash was not of the age agreed upon when he was to draw a man's wages. The operator continued to pay him a minor's wage. The union officials contended that Mishmash was of age and entitled to a man's wages. All that was involved at the most was about $200. After three years of dickering back and forth, Howat called a strike of three hundred men and kept them out of employment for many days, losing to labor a great amount of money to which the men were entitled and which they needed. Thousands of dollars were lost to the laboring men, who were called upon to stand the loss, in order to enforce a collection of $200.

Howat would not appeal to the Industrial Court, and would not permit Mishmash or any member of the union to appeal to the Industrial Court pending the controversy. When the strike was called, it was in violation of the Industrial Court law, and Howat was tried and convicted for it by a jury of his own neighbors.

The strike called the attention of the Industrial Court to the Mishmash controversy. The Court, on its own motion, made an investigation, and called in the operators and the Mishmash family as witnesses. After hearing the evidence the Court found for Mishmash and against the operators, and ordered the operator who had withheld the wages to pay Mishmash the $200, and to pay him interest on the amount from the time the wages were withheld.

It required the Court only three hours to do what Howat and the operators under the old strike system had taken three years to do, and had then failed.

Howat would not permit Mishmash to accept the

interest, because he feared that would be a recognition of the Industrial Court. But, in the testimony of the Howat trial the superintendent of the mine involved said: *"We paid the money when we received the order from the Court."*

Nothing could more fully demonstrate the efficacy of the Industrial Court. Nothing could more fully justify the law than the Mishmash case. And Mr. Howat and Mr. Dorchy will not remove or cloud the argument for the law as revealed in the Mishmash case, not even if they spend the winter in the Cherokee County jail.

One instance of the unreasonable attitude of Howat which will enable one to appreciate the patience of the Court, is the case of a young Irish-American who was called as a witness before the Court in a hearing concerning a coal strike against the Central Coke and Coal Company. This young worker testified that the men were called out on a strike in the middle of the summer of 1919, by Howat. The man had a wife and children and wished to keep at work to supply them with the necessities of life. He went to Howat after a couple of weeks of involuntary idleness to ask what were the chances of getting back to work.

Howat said, "Well, I don't know."

The worker said, "What did you call the strike for?"

Howat said, "That is a long story. I can't tell you now. I'll tell you sometime."

The worker narrated that the strike was prolonged until there was great suffering and he never did learn what the strike was called for, and it was not ended until Judge Anderson of Indianapolis brought it to a close.

Another instance is that of Alexander McAlester who is the oldest shot firer in the Kansas coal fields. His occupation is very dangerous and important.

Before the war a shot firer was paid two dollars and eighty cents per day for firing at forty places with additional pay for additional work. During the war, the operators, to save men, increased the work without increasing the pay. Consequently when the Industrial Court was established McAlester was one of the first to ask for an increase in wages for the shot firers whom he represented. After a brief preliminary investigation the Court set a date for a further hearing of the case. When the time arrived for the hearing McAlester appeared and showed the Court a check from the employers covering the amount of his request.

A case that furnishes peculiar argument for the Court is that of the application for relief in behalf of the street railway employees of Hutchinson. The case was brought before the Court by Fred Kervis, who was a candidate

for the legislature at the time and was making his campaign in opposition to the Court. His application was for higher wages for the street railway employees, and the opposing parties came to an agreement in open court. Kervis stated in the open court that the findings were very satisfactory and that the Court had shown great consideration for him and his fellow plaintiffs. This case was thus decided before the election day arrived, but Kervis continued in his campaign of opposition to the Court and was defeated in the election.

Another interesting case, which also shows the inconsistency of some who try to criticise the Court, is that of W. F. Long from Parsons, Kansas, who is one of the "outlaw" switchmen who left Kansas City after their strike in that place. After suffering unemployment for some time he went to Parsons and got a job. After working two days he was dropped and the company gave as the reason that the Railway Brotherhood had demanded his discharge because he had taken part in an unauthorized strike.

Now some of the members of the Railway Brotherhood and other members of organized labor have criticized the Court because, as they charge, it takes away a man's divine right to

quit work. In this case it seems that they have denied a man his divine right to quit work at his own will. To be sure, this impression that the Court denies the right to quit work is a misunderstanding, which will be discussed more fully elsewhere in this volume. In this case it seems that the labor leaders denied this man his "divine right to quit work."

If the Brotherhood denied to the "outlaw" switchmen the right to quit work how can they consistently criticize the Court for the same thing?

Another case that illustrates the extraordinary usefulness of the Court, is that of protecting the miners against being charged unreasonable rates of interest for the advancement of small loans on the security of their forthcoming wages.

The average period of these loans is one week and the rate charged is usually ten per cent regardless of time, which makes the actual interest rate about five hundred per cent per annum. This service is quite generally utilized and the union officials had never been able to do away with this injustice, but the Industrial Court put a stop to it within a few minutes after it came to their attention.

The unofficial record of the Court testifies

to its usefulness. The Court encourages voluntary conciliation between employers and employees to remedy living conditions and working conditions. The very existence of the Court encourages the parties to arbitrate and conciliate their differences.

The Industrial Court, in order that it might be prepared to do its work intelligently, makes surveys of industrial conditions in those communities where it is called to adjudicate differences. Its survey in the mining districts of Kansas shows the need of just such an institution.

There a man must pay $50 to join the union before he can be permitted to work at all. Then in addition to dues, large sums are collected in the form of fines and special assessments by the union officials. Sometimes union officials have been known to misappropriate large sums of money collected from the miners. At one time $10,000 was sent to help a socialist newspaper in Oklahoma.

Also large sums of money have been paid out of the union treasury to attorneys who served the union officials but rendered no service to the miners at all. The records of the United Mine Workers' Union of Pittsburg, Kansas, shows that an attorney, Redmond

Brennan, drew $18,000 for defending Howat when Howat went to jail at Columbus, Kansas. Concerning this fee another attorney said that the case was so clear that defense was useless, that a high attorney fee was an entire waste of money, that no legal talent could have altered the case, and that Brennan's services were of small value to Howat and surely without value to the miners who paid the $18,000 out of their poverty. Union funds were also used to help in the defense of the I. W. W.

Of the ten or twelve thousand miners in the Kansas district about one thousand are of American parentage. Many of these foreigners were, at some time, brought in as strike breakers and afterward became unionized. They represent many nationalities and have but little in common but their labor union. They live in small, unattractive rented houses that belong to the company, for the most part. Among many of them there has been but little religious or other welfare work done. Many of them become socialists. The socialist paper, *The Appeal to Reason,* is published in Girard, Kansas, in this district. Only a few of the operators seem to care at all for the welfare of the men, judging by what has

been done and not done for their welfare. The union officials are autocrats, and in their rule have exploited the miners and have used duress and intimidation. Surely this district needs the services of the Industrial Court.

When organized labor understands the motives and methods of the Court it is friendly. An illustration of this fact is found in the expression of Charles W. Fear, editor of the *Missouri Trades Unionist,* who said:

> We know that working men with whom we have discussed the question declare the Industrial Court Law to be a move in the right direction for peace in the labor world. Why not give the new law a fair trial and have it amended if amendment is needed?

Definite good results from the work of the Court can be found in the Kansas coal field. Here during the first year after the Court was established the total production of coal was seven million tons as against the previous average of five and a half million tons. After some attention from the Court there arose among many of the miners a more contented atmosphere. It was a satisfaction to them to think that it was no longer necessary for them to strike, and starve their families in order to have their complaints given a reasonable hearing. And this improved condition would have

been permanent but for the gross misrepresentations concerning the Court, made by radical labor leaders who felt that the benign services of the Court would likely loosen somewhat the grip of their tyranny over the men and check some forms of their exploitation.

These misrepresentations and the prejudices which they aroused caused some of the miners to quit work in protest against the sending of Alexander Howat to jail. But the district court could not avoid sending Howat to jail, because he repeatedly defied the Court, repeatedly refused to obey the law and taunted the Court until his followers boasted that the Court would not dare to send him to jail and could not compel him to obey the law. However, recently the men who quit work in protest against Howat's jail sentence either returned to work or asked to have their places back, and have been refused by their former employers.

Outside the ranks of those few misled miners, public sentiment is upholding the Court.

The investigation of the mining district revealed that the public school teachers are making Americans out of the coming generations of foreigners. When the school children were asked about their nationality many of them

did not know, few of them manifested any particular interest in the question of where they had come from or the nationality of their parents but they all unanimously declared that they were Americans and loyal to America. The teachers are doing faithful work along all lines, so far as possible, but the material equipment of the schools is not at all what it ought to be, for the want of school revenues.

While an occasional operator shows some kindly interest in the welfare of the men, and while an occasional union official is a safe and sane leader; for the most part the miners have been ruthlessly exploited by the operators, and impassioned and misled by the demagogic harangues of shallow agitators who sought places as officials of the union. Surely there is great need for just such an institution as the Industrial Court.

An unusual feature of the law was tested in the case affecting several of the flouring mills in Topeka. The situation back of the bringing of the case was that the price of wheat had gone down below a dollar and a half in Kansas at the points of origin late in the fall of 1920. This, the farmers declared, was below the cost of production and they held back shipments of wheat to the mills. Thereupon a

number of the mills in Topeka closed down and let out some of their employees. Now it seems that they had not carefully read the law establishing the Industrial Court; for the law provides that any establishment engaged in the preparation or manufacture of food products must not close down or curtail production without a hearing before the Industrial Court, and permission also from the Court to do so. The Court investigated and called the owners of the mills to appear before it on the charge of curtailing production. The mill owners obeyed the summons and when the Court heard the conditions it gave the permission to reduce output.

The partisan critics of the Court represented that the Kansas flour-mills case was an instance of the Court trying to compel a business to continue activity at a loss. This criticism was entirely unfair in every way. The Court had no purpose at all to try to compel an enterprise to continue business at a loss or even without a reasonable profit. The object of the Court was to investigate and see if the flour-mills were really threatened with a loss, or merely reducing output to affect prices in the interest of unusual profits. When the Court learned that the desire of the flour-mills

to reduce output was reasonable, the permission to do so was readily granted. On the other hand, one can see the harm that might result to the public if flour-mills were allowed to close down simply to affect prices and starve or rob the public.

The case of the Kansas flour-mills was adjudicated promptly and without undue restraint or embarrassment; and the advantage to the owners, of having the matter investigated, was that they were thus spared unjust criticism which would have otherwise resulted from the suspicion that they had reduced output in an unreasonable way as a means of exploitation or oppression. The speedy adjustment of the case had a wholesome effect on all concerned and on the public in general. No one was prejudiced at all in any way as a result of the intervention of the Court; on the contrary, everyone felt that justice had been vindicated and that in the future no essential industry would be permitted to curtail output simply for the selfish purpose of exploitation.

In this matter the law is specific and just. It states that the employer is to have a fair profit in production. It is clear that the purpose of the law and of the judges of the Court is not to require a business to be continued

under difficult circumstances unless the lives and welfare of the people depend upon it. It is also clear that in the future organized selfishness will not be allowed to submit the people to grave danger or serious inconvenience for the extraordinary enrichment of a few predacious promoters of monopolistic enterprises. It is simply a new and reasonable method of manifesting the police power of the state for the protection of all the people. It is a necessary — absolutely necessary — enlargement of the functions of government to meet a new condition that must be met if the present form of social order is to survive rather than break down and give way to either autocracy on the one hand or bolshevism on the other. The public cannot permit a few to do as they please when the life of the public is in the balance.

During the latter months of 1920 and the early months of 1921, there was a reduction of prices along many lines below the abnormally high prices that had prevailed during the last couple of years of the World War. Going with this period of reduction was a slacking-up along many lines of industry and men were left out of employment. During this time it was a common thing for a factory to close

down for a few days, leave the men out of work and then announce an opening again at a new scale of prices, particularly a lower scale of wages. Some great industries that were strongly organized shut down for the evident purpose of both reducing wages and at the same time curtailing output and holding up prices to an abnormal level. It is perfectly obvious that large organizations having monopolistic advantages could thus secure for themselves enormous profits and subject the public to great suffering from the need of the essentials of comfortable living. Have the people any remedy against such malefactors? Yes. The Kansas Court of Industrial Relations proposes to investigate such cases and protect the public against extortion.

To be sure we may expect objections, criticisms, and predictions of great difficulties to come from partisan opponents of those who happen to be in office at the time, and from the ultra-conservative who oppose all things that appear new and also from those who expect to profit in some way from the methods of the past. Also we may expect support from all those who take the care to learn the true nature of the Court and who are at the same time concerned to see the best possible endeavor

to administer justice to all, in our industrial rivalries.

Some of those who are doubtful about the success of the Industrial Court have said:

> The decrees of the Court have been accepted in good faith because it has been possible for the Court to increase wages in most of the instances where it has been called to make adjustments; but now that the time is coming when the Court can no longer give increases in wages to all who come seeking its intervention, it will become useless or unpopular.

This fear is unfounded because, the Court can protect labor in times of depression when many men are out of work and capital is disposed to exploit labor by unnecessary reductions. It can also protect the public when capital is disposed to reduce output in order to keep up the prices. When men are out of work and an idle man stands ready to take the job of every man who is at work, then the employer has a tremendous advantage; and but for the intervention of the Court, labor would be almost helpless. Instead of breaking down in hard times, it is then that the Court will render its greatest services to labor and to the public, by means of restraining the hand of organized greed, and stabilizing production and the continuity of services.

CHAPTER V

THE COURT APPROVED BY THE PEOPLE OF KANSAS

THE Court of Industrial Relations in Kansas has now been in operation for nearly two years and has been heartily approved by a large majority of the people of the state. Indeed investigation convinces one that the approval is enthusiastic and almost unanimous. Here in Kansas, as elsewhere, one finds to some extent the regrettable tendency on the part of politicians and their partisan followers when not in power to try to find fault with all that is done by the party in power even though that policy leads them to criticize very worthy action in particular instances. So we find here a few partisans out of office who would, of course, try to oppose whatever is done by those who happen to be in office. Nevertheless the Industrial Court is heartily approved by many of the political opponents of Governor Allen as well as by all his own party followers.

When we interview one who does fail to approve the Industrial Court he usually declines to give any reason at all for his atti-

tude, or if he attempts to give a reason he is very apt to reveal either that he knows nothing about the Court or that he has an immediate pecuniary interest in those controversies over which the Court has jurisdiction, and he thinks that he could somehow get a greater advantage for himself through conflict than through adjudication. The great majority of those whom we interview show that they understand the Court in its origin and its accomplishments, and that they are for the Court, regardless of political party lines.

In the last general election more than half a million voters in Kansas expressed themselves with reference to the Court and the result was a most gratifying approval. The results of the election endorsed the Court in every county in the state, even in the industrial centers. Even in Crawford county, in southeast Kansas, in the center of the mining district, the home of Alexander Howat, district president of the International Mine Workers Union, the most active enemy of the law establishing the Court, the entire legislative ticket in favor of the Court were elected; while the candidates opposed to the Court were all defeated.

From the day that the Court was estab-

lished certain radical labor leaders began a campaign of misrepresentation and prejudice. They endeavored to unite against the state administration every dissatisfied element, but Governor Allen was reelected by a majority of more than a hundred thousand votes and carried all but three of the one hundred and five counties in the state. Every legislative candidate who opposed the Court was defeated. Every member of the legislature who had opposed the Court in the special session at which it was enacted was left at home. The only republican legislator who voted against the Court was defeated for reelection by a democrat who was for the Court, and that in a republican district and despite a republican landslide.

Radical labor leaders assessed their members for large sums of money with which to secure campaigners against the Court. Alexander Howat announced publicly that Farrington, of the Illinois miners unions, would send $100,000 into the state to defeat the Court.

The people of Kansas had two opportunities to show their judgment concerning the Court, first in the August primaries and then in the November election. The result in each of these referendums to the popular verdict

was a complete vindication of the Court. The republicans of the state had a chance in the primaries to show if they endorsed the Court and they responded by nominating a legislative ticket that was even more overwhelmingly favorable to the Court than had been the legislature that enacted the law. And the people of the state as a whole have in former years shown a disposition to vote independently of party lines when such independent voting would express their convictions, so that it is perfectly reasonable to infer that if the Court had not been approved by the people of the state the election would have gone differently. There could be no mistake about the general vindication of the Court.

Governor Allen was regarded as the author of the law creating the Court and responsible for its aims and methods. Consequently the fight was centered against him. He was accused of unworthy motives. His friends are confident that these accusations were unjust. The accusations were that the Governor was merely playing politics on an ambitious scale with the hope of making a favorable impression on the next National Republican Convention for the nomination for President or Vice-President; and that he was merely design-

ing a court that would serve as an institution to intimidate the laborers and prevent strikes and so serve the purpose of capital and thus secure the support of capital to serve the Governor's political ambitions.

But those who know the Governor best believe that his motives were entirely patriotic and his purpose was to secure justice for labor without the expense of the strike, and honestly promote the welfare of the state.

During the campaign before the election the Governor spoke in a number of places where the agitation and adverse criticism had been most aggressive and persistent, and in those places as elsewhere he was heard with the closest attention and treated with the greatest respect by his audiences.

Thus far there is absolutely no evidence that either the Governor or the Court have had any other than the most altruistic motives, or that they have employed any but the best known methods in all that has been done in the adjudication of industrial differences.

The author has interviewed many persons of all classes to get their opinions concerning the Court and has found but few critics who really seemed both informed and free from bias. In the large number interviewed, right

here at the home of Alexander Howat, the chief critic of the Court, we found almost none opposed to the Court except those few who were the close personal adherents of Howat, and they generally revealed an attitude of partisanship and a lack of information concerning what the Court has done. Notwithstanding the fact that the administration of the state during the time of the formation of the Court and up to the present time has been republican, nevertheless we find among the democrats many who are very loyal to the Court and very impatient with all those who oppose it.

CHAPTER VI

THE RIGHT OF THE STATE TO ADJUDICATE INDUSTRIAL DISPUTES

THOSE who object to the Industrial Court say that the state has no right to fix wages. They might be reminded that the state does fix the wages of all public servants, such as schoolteachers, and postal employees, and in many instances, especially in the case of school men it is admitted that the wages fixed by the state are less than the individual might otherwise earn. Also the critics of the Court say that the government has no right to say that a man shall not quit work.

The law creating the Court does not say that men shall not quit their work or change their occupation; and the Court has never forbidden any man to quit work or denied him the right to quit his occupation in an orderly way; but on the contrary the law expressly says that such right shall not be denied to men.

The law is designed to promote industrial peace, secure the continuity of service, protect the public and prevent one man or set of men from forbidding other men to work when they

wish to work. In a democracy it is desirable that men should have as much freedom as possible to choose their occupations and to change their occupations. However, some restrictions are necessary. A fireman may not quit his job on the way to a dangerous fire without being punished for such treachery, but he may serve notice of his desire to change at a time when there is no imminent danger so that his place may be filled before the next moment of great need. A policeman may not quit his job in the face of danger but may quit at an appropriate time. A soldier may not quit on the eve of battle but may change at the expiration of the time of his enlistment unless he be drafted for further service. If a schoolteacher quits without cause and at an inopportune time he may find that he cannot secure another place as a teacher, and also he may not at all forbid another to take his place.

For many years schoolteachers, and others who were interested in education, believed that schoolteachers were underpaid, but teachers did not strike or even refrain from work and try to persuade others not to take their places; and when they organized it was for self-improvement that they might render the better service to the public. They depended for an increase

in wages upon the methods of educating the public as to their worth, and going into other lines of work to demonstrate that they could earn more in other work than in teaching.

Likewise if a coal miner feels that he can make more at some other occupation it is his right to change his occupation and even to persuade other miners to do likewise until the shortage of mine laborers would cause the operation of the law of supply and demand to increase the wages. Likewise, it is perfectly right for the miner to ask the public to investigate the conditions under which he works, the wages, the hardships, the profits of the business and the rightfulness of his demands for better wages. It is also right that the miner should organize and employ the methods of collective bargaining and of bringing to bear collective influence along ethical lines to secure justice in his work. But if large bodies of organized miners strike at the beginning of winter, shut off the coal supply so that millions are in peril, and then in their organized capacity declare that others shall not take their places and that coal shall not be dug until their demands are met — that people may freeze until the miners fix their own price for their work — then if these striking miners picket the

mines and refuse to allow the mines to be worked, the situation calls for the interference of government. And if labor is so underpaid that such methods are necessary to secure just wages, the situation calls for the interference of government before a strike is necessary.

The strike should not be necessary; and if it is necessary, then government is not performing its full function of protection and justice. If organized laborers can, by striking, secure justice they can also secure injustice. That is to say, if by striking, the laborers can compel their reluctant employers to pay just wages, there is nothing to prevent the same laborers from also striking to secure more than just wages. In either case it is an industrial conflict that will be decided in favor of the stronger combatant. There is no assurance that justice will be administered. It is merely a test of contracting strength in which the stronger will win. The striker may have a just cause and lose; in which case it would be much better to save all the expense of the strike and submit the matter to a judicial tribunal by which method nothing would be lost and justice would be likely to prevail. If the organized laborers have a just

cause and have the fighting strength to win as much as they should justly win, then what is to hinder them from using the same fighting strength to fight again and win more than is justly theirs. If one body of men organize and thus secure more than is their just share, it means that some other body of men must get less than their share. If men who organize and strike get more than those who do not organize and strike, then all will be induced to organize and strike. If the strike can be successful there is great temptation to repeat the success at frequent intervals. This means constant struggle and interrupted employment where there should be peace and constant service. The state must make these methods unnecessary and provide a better means of settling differences just as it has in the matter of civil disputes and personal conflicts. To adjudicate these differences without cost is the work of the Industrial Court.

The Industrial Court may not be always able to administer perfect justice; neither does the present method of conflict secure perfect justice. The Court will cost less to all concerned and be certain to come nearer securing justice to all concerned than will the method of conflict. The method of conflict is the

method of barbarism; the Court is the method of civilization.

Those parties who prefer to settle their controversies by the method of conflict must be taught that their preferences in the matter should give way to such methods as are best for the state, and that the individual can never have any right to employ a method that is injurious to the state. Even though both parties to the industrial conflict should find their membership to be unanimous in their preference to settle their industrial controversy by the method of conflict, they still have no right to do so because such method is not best for the other people of the state.

Every individual in the state has a right to be considered in the adjustment of all controversies affecting the welfare of the state. The state as a state through its function of government has a right to control any industrial methods among its citizens when such methods affect the welfare of large numbers of citizens, and when state control promises better results than private action without state control. Because the methods of conflict have been allowed in the past is no reason why such methods should be employed in the future. The method of conflict never was the best

possible method for all parties interested. It was tolerated because of conservatism, and because the better method of adjudication had not yet made sufficient appeal to the minds of the governing majority in a republican form of government.

We hear something about the "inviolability of vested rights." This is a mere legal fetish for the protection of things as they are. No man or corporation of men can have vested rights which the state may not abrogate when such is required by the good of the state. The self-interest of the few cannot hold against the rights of the many. The welfare of the few cannot be held against the demands of justice to the many. A former generation had no right to say irrevocably what this generation should do. The people of a state at a given time cannot make an unchangeable statute law or an unamendable constitution. The people in their capacity as a state have a right in each period of time to make such statutes as shall seem best at the time for their welfare.

A study of the laws of primitive society reveal that for the primitive man laws were few and simple. As man advanced in social progress he needed and made more laws. As a rule, laws were not made until they were de-

manded by new conditions. There has always been some sort of struggle between capital and labor. This struggle has often been marked by needless bloodshed, because at the time the processes of law were not adequate to administer a semblance of justice without conflict. That struggle has assumed different forms during different periods of time, and it has been common for law makers to endeavor, in the interest of the state, to prevent the struggle from assuming its most dangerous forms. The intent of law always was to keep social activities and industrial processes running smoothly and without loss of life or property. Sometimes when the law has not met the situation adequately loss of property, loss of life and even revolution have resulted.

As inventions and labor-saving machinery and education increased the effectiveness of laborers their lot was improved. Also the amount of capital in the hands of the employers was increased. As laborers saw the profits on their work increase they demanded more and more in the form of wages, better working conditions and shorter hours. Government made laws requiring improvements in working conditions and providing for shorter hours. Still the conflict for profits and wages con-

tinued, with resulting strikes on the one hand and lockouts on the other. Labor organizations sought to prevent and many times did prevent any man from working unless he joined their unions; and they sought to regulate, through their leaders, all the conditions of labor. Labor leaders were often autocratic, unreasonable, and even unethical. They reduced output and threatened the common welfare. Their attitude added to the hostility between capital and labor and fanned the flames of ill will between employers and employees. The employers were also often to blame in being greedy, domineering, unsympathetic, personally extravagant, unsocial, snobbish, and unjust. This hostile relation between capital and labor was not good for the welfare of either party to the conflict, and was perilous to the public; consequently we see governments making many attempts to soften the rigors of this conflict or protect the public from the possible cessation of services.

As organizations of capital became larger and more compact, and as organizations of laborers became larger and more unified, the struggle assumed still more dangerous proportions, and law makers endeavored to make some provision for the public safety. Corpora-

tion commissions and boards of arbitration became quite common and have done much good, but have been inadequate to meet the need for the adjustment of differences or the complete protection of the public.

In some industries a temporary peace has been established by the introduction of the methods of industrial democracy, but such peace is only temporary and partial and leads on toward a new form of conflict between new units of production. And we can see no way of adjustment of the new conflicts except through a tribunal with power like the Industrial Court.

The only solution of this problem which some men can see is socialism. But the people of this country are not ready for socialism, only a small portion of the people are in favor of the socialistic program. The number of socialists apparently is not growing. The great majority of the American people want a remedy for our present industrial conflicts now; they are not now in favor of state socialism; they never expect to favor that program; and they do not wish to wait for that solution of the problem. Furthermore, they do not wish to do anything that will add to the argument for socialism, or leave without a remedy some

evil which will constitute an argument for socialism. Apparently the outspoken socialists wish to leave present evils without a remedy so that these evils may be used as an argument for socialism; but the great majority wish to cure our ills without any thought of waiting for socialism, and to cure them as quickly and as effectively as possible so that they may not be used as an argument for socialism.

Whenever an ill of any sort appears in the existing order the socialist says, " Let us have state socialism and that will cure it." He will listen to no other prescription. Apparently he is pleased to find as many faults as possible in the present order, and to witness new evidences of its failure. He seems opposed to any remedy for an existing evil because he wishes the evils of the present to become unbearable as a means of revolution.

For this reason some socialists are opposed to the Industrial Court. The Court promises to do what they have said could not be done. The Court promises to give us a remedy where they have said none was possible. If the Court can continue to succeed as its friends hope it can, then socialism will have lost its greatest argument. The opponents of the Court in southeast Kansas at the present time are large-

ly socialists who insist that nothing short of socialism can accomplish the purpose for which the Court was established. It is infinitely easier to give the Industrial Court a fair trial for a long time than to try socialism. It costs almost nothing to give the Court the fairest kind of trial and there is no reason why it should not be given a good long trial. But it would prove an enormous task to give socialism a trial.

However, it sheds light on the situation to understand why socialists oppose the Court, and to realize that their opposition is not based on any considerations that appeal to non-socialists, but quite the contrary. Socialists oppose the Court because they fear that it will be a good thing in the existing order and so help to perpetuate the existing order. The rest of us favor the Court for the very same reason. We believe that it will help the existing order so much that socialism will lose its appeal.

The socialistic state would solve the wage controversy by the revolutionary method of government ownership of the instruments of production and governmental management of the processes of production along with governmental authority for wages and distribu-

tion; while the republican state with the Industrial Court would continue the present method of private ownership, and private management, and private adjustment of wages so long as the private adjustments work satisfactorily, and court supervision only when private adjustment breaks down in essential industries. Socialism is based on the belief that the great object of industry is the production and distribution of economic goods; while republicanism believes that character building in the lives of men and women should be the chief aim of industrial processes and that character building can be best promoted under the present order of things where there is more freedom for initiative than can be imagined under state socialism. Also the protagonists of republican forms of government believe that more goods will be produced under private enterprise than under state ownership.

We want a political rather than an economic form of government; by which we mean that we want a government by all the people rather than by an industrial class, and a government that safeguards all the interests of the people rather than one that is chiefly concerned with production and distribution of goods. The re-

publican state gives the individual as much freedom as possible; the socialistic state gives the individual as little freedom as possible. The republican state leaves all to private endeavor so long as private endeavor accomplishes its purpose for the good of all concerned; the socialistic state leaves no room for private endeavor. The republican state only interferes with private endeavor when such interference becomes necessary; the socialistic state interferes with everything and abolishes all private endeavor and the incentives to endeavor.

The republican state would leave all industrial affairs as they now are and only supervise their administration where such supervision is necessary in the interest of justice; while the socialist state would leave nothing as it now is but would undertake to make everything over, a new pattern.

So long as private enterprise functions justly the republican state with its Industrial Court will not disturb its methods in any way; but the socialistic state will allow no private enterprise at all. The Industrial Court will disturb no good thing in the present order, but the socialistic state will disturb or destroy every good thing in the present order and attempt to

build a substitute for it. Most men know fairly well what they can do, what they can earn, and toward what they may aspire for themselves and their children under the present order with an industrial court, in a republic; but with the revolution to a socialistic state no man can have any idea what he can do, what he can earn or what he may hope for himself or his children. At the present time any man may save and teach his children to save and invest and become a property owner. Under socialism no one can become the owner of productive capital.

We know the good and evil of the present system and how to strive to help in the great work of overcoming evil with good; but if we change to a socialistic system we know not what evils may beset us or whether we can do anything to overcome them. If we ever overthrow the present order, to set up a socialistic state, we do not know whether we can undo the change and return to the present system again or not. We do know that we can try the Industrial Court and if it does not continue to work well we can repeal the law and be just where we were with no harm at all from the experiment.

An occasional anti-socialist says that he is

opposed to the Industrial Court because it is socialistic in its methods; while we hear the socialist say that he is opposed to it because it will only delay the coming of socialism. The writer believes that both are partly correct as to the nature of the Court, but that neither are right in being opposed to the Court. We believe that the socialist is right in thinking that the Court will delay the coming of the socialist program. In fact we think that the Court will develop into an instrument of such usefulness that socialism will lose so much of its appeal as to be delayed indefinitely; but that is no reason for opposing the Court, but instead is a great reason for being in favor of it. The Court promises to remedy some of the evils while preserving all the good things in the present system, and leaving us living in an order of things that we understand instead of hurling us, as socialism would, into a new order the difficulties of which we would not understand.

Neither is the anti-socialist justified in opposing the Court on the ground that it is socialistic. The postal system and the free school system are both socialistic, but both, because of their universal good services to the masses, help to content the very class of people that

advocate socialism, and no one proposes to abolish these services because they bear some resemblances to things that are in the socialist program. While the Industrial Court may bear some resemblance to socialism, nevertheless the more successful the Court becomes in its work the greater argument it will afford against the socialistic program in its entirety. If the Court can reduce the ills of the present system it will thus strengthen the conservatism which holds on to the present system.

The socialist who says that the Industrial Court will not work well, that it cannot do the good for which it was intended, is inconsistent because, if the Industrial Court cannot do the work for which it was designed how can the whole socialist program be made to work; since the socialist program would put everything under state control. We are confident that the Industrial Court will continue to do much good because it has already done much good in the adjustment of industrial disputes, and because it is based on sound political reasoning and supported by the sentiment of a large majority of our people.

Our people in their thinking, and our industrial system in its complexity, are ready for the Industrial Court. Our people in their senti-

ment are not at all ready for socialism and have no idea of giving it a trial. If we were to try it at this time or at any early date, many of us think that it would not work because human nature as it now is desires competition and private enterprise and is not ready for unselfish communistic endeavor on the socialistic basis.

The wise and unprejudiced socialist ought to welcome the Industrial Court as the best instrumentality along the line of his ideals which he can get at the present time. And the anti-socialist ought to favor the Court as a tribunal that will remove much of the effective argument for socialism by curing the evils to which the socialist calls attention in his disparagement of the present order.

Certain capitalists oppose the Court, apparently because they think that without the Court they could drive harder bargains with their employees; but they should remember that in doing so they endanger their whole business, which the methods of the Court would make more secure and in the long run more profitable, even though it did somewhat limit the inordinate profits of the present. It is better to be safe than sorry.

Some laboring men oppose the Court, as they

say, because they think that they can get better wages by striking than the Court would award. If the Court awards just wages they should not want more and it is doubtful if in the long run they can get more than the Court would award. Indeed it is doubtful if they can get as much by striking as the Court would award. Even the method of striking can never bring to labor greater wages than the business can afford, and the business can afford better wages if not interrupted by the strike. The method of striking is costly to labor while the awards of the Court cost labor nothing.

Some laborers say that they are opposed to the Court because they do not want to give up the right to strike, and when told that the Court will make the strike unnecessary by investigating and awarding them the thing that they strike for, if just, they reply that they fear that the Court will be influenced more by capital than by labor and will not give labor justice. Our answer to this has been, first, we believe that the Court will continue to be just to labor and will not be unduly influenced by capital, because no court can afford to live under the just accusation of being an instrument of capital, because such an accusation, if supported by the semblance of facts would

arouse political opposition and defeat the administration in power and make a change. Second, the history of the present Court thus far has not been such as to warrant any other than the belief that it is fair to both parties and as friendly to labor as is consistent with justice. Third, the history of courts of equal dignity in this country reveals them as fair and just and not unduly influenced in the past by capital. While capital has economic power, organized labor has political power, so that organized labor can make its political power felt if it is not dealt with justly.

CHAPTER VII

THE PROPOSAL TO ESTABLISH A FEDERAL INDUSTRIAL COURT

PRESIDENT HARDING in his Annual Message, December, 1921, recommended a Federal Tribunal to adjust labor disputes in the following words:

The right of labor to organize is just as fundamental and as necessary as the right of capital to organize. . . . . In the case of corporations which enjoy the privilege of limited liability of stockholders, particularly when engaged in the public service, it is recognized that the outside public has a large concern which must be protected; and so we provide regulations, investigations, and in some cases detailed supervision. Likewise in the case of labor organizations, we might apply equally well-defined principles of regulation and supervision in order to conserve the interest of the public as affected by their operations.

Just as it is not desirable that a corporation shall be allowed to impose undue exactions upon the public; so it is not desirable that a labor organization shall be permitted to exact unfair terms of employment or subject the public to actual distress in order to enforce its terms. Just as we are seeking procedures whereby to settle and adjust differences between nations without war, so we may well look about for means to settle the differences between organized capital and organized labor without resorting to those forms of warfare which we recognize by the terms strikes, lockouts, boycotts, and the like.

As we have great bodies of law carefully regulating the organization and operation of industrial and financial corporations, and as we have treaties and laws among nations which look to the settlement of differences without conflict; so we might well have plans for conference, mediation, arbitration and judicial determination in controversies between capital and labor.

To accomplish this would involve the necessity to develop a thorough-going code of practice in dealing with such affairs. It might be well to set forth the superior interests of the community as a whole to either the labor group or the capitalist group. With rights, privileges and modes of organization thus carefully defined, it ought to be possible to set up judicial or quasi-judicial tribunals for the consideration and determination of all disputes which menace the public welfare. In an industrial society such as ours, the strike, the lockout and the boycott are as much out of place and as disastrous in their results as war or armed revolution in the domain of politics.

We note that President Harding used the words "judicial determination," and "judicial or quasi-judicial tribunals," and "determination." Clearly he means to go further than investigation, arbitration, recommendation, and publication; for we have all of these now and they have proved useful but inadequate. The more adequate thing is "judicial determination" such as we have in the Kansas Court of Industrial Relations. Even though all the individual states in the Union should each establish Industrial Courts, that would not be

entirely sufficient to deal with controversies affecting interstate commerce. Here we need a Federal Court of Industrial Relations such as President Harding has recommended.

The first step in the right direction will be a most carefully prepared federal law creating a Federal Court of Industrial Relations. While something may be gained by a study of the efforts along this line in New Zealand, Australia, Canada, Colorado and particularly in Kansas, some original provisions will be necessary because of the nature and scope of our federal government. Those who must administer the new law will need the sentimental support of the people; and will probably have the support of the party in power when the law is drafted. Quite likely the party that is not in power when the law is drafted will criticize it adversely. And right here we are reminded of one of the regrettable things about party politics, which is the tendency of the party not in power, not only to criticize what is done, but also to try to prevent the success of the measures of the party in power. Also some opposition may be expected from those employers who think that they could drive hard bargains with labor and so make more money without the intervention of such a Court. And

some opposition may be expected from those peculiar labor leaders who have themselves personally enjoyed their past methods of making strife between labor and capital so that they might pose as the champions of labor. These personally prosper by industrial war rather than industrial peace. They will not wish to see the Court do better for labor than they can do. They will not wish to see industrial peace put their militant methods out of business. On the other hand we shall find intelligent and altruistic labor leaders welcome the peace which the Court will bring; and also fair-minded employers who will be glad to see the continuity of business which will come with adjudication that shall replace agitation and uncertainty.

Positions on the Court or influence with the Court will be fraught with great temptations to serve selfish interests, and for that reason such positions should never be regarded as spoils, as patronage or as any place to pay party obligations. The public sentiment of the country should be taught to condemn any party that should regard the Court as a selfish opportunity or fail to hold the Court far above sordid considerations.

Along with all the other qualities needed the

judges of this Court should be men who have in their lives already demonstrated that they have absolute courage and fidelity — that they will not yield to any selfish consideration — that they will not use the Court as a means to seek any other position — that they will live humbly, and possess only the salary of the office, and die poor. To serve on that Court should be regarded as one of the highest honors that can come to any man, and its judges should regard that honor as their only reward along with a living salary.

Such a Court could do a great deal of good and little or no harm.

To give it a trial would cost almost nothing compared with the potential benefits. It is an experiment which could be tried and abandoned without loss. Therefore there is no good reason at all for not trying the experiment. But it should not be regarded merely as an experiment. It should be regarded as an instrument to be improved rather than abandoned if faults are found.

However, the most effective Court of the kind could not cure all our industrial ills. We need industrial democracy with a new birth of brotherly love on the part of both capital and labor. We need new ideals of service to re-

place selfishness. Capital must put off extravagance and vanity, and labor must put off envy and discontent. Capital must put off the assumption of superiority and recognize the laborer as his brother. Both must fear God and love men.

The Court can adjudicate differences, but it cannot compel men to be satisfied with the results. Where capitalists are greedy for inordinate profits, and where laborers want wages higher than they can earn, no Court can render a verdict that will be satisfactory. Nevertheless the verdict of the Court will be better than trial by battle.

And for such situations, along with the work of the Court, we need to have some of the methods of industrial democracy. The laborers should own shares in the business, so as to be interested in the profits and have a voice in the management. The laborers should be part-owners, and the owners should be in genuine sympathy with the laborers. One who is both a property owner and a worker is a better citizen than one who owns property and does not labor, or one who merely labors and owns nothing. The laborer should own enough stock in the concern he serves to have a vital interest in the dividends; and the capitalist

should have enough sympathy for the laborer to wish to pay as good wages as the welfare of the business will allow. Where such mutual interests exist we are not likely to find the evils of strikes, lockouts, boycotts, reduced output, time killing, slack-work, unsafe conditions or ill will. Public sentiment should encourage the establishment of such conditions by giving preference in trade to concerns that are doing business in that way. An Industrial Court would be in a position to encourage such reformations. Laboring men should be taught to save money and invest in the stocks of the firms they serve as an evidence of good faith. Capitalists should be expected to sell, at a reasonable rate, stocks to their employees as an assurance of fairness and good will.

Even industrial democracy, desirable as it is, cannot bring about perfect peace or complete harmony among all interests. The peace it brings will be local and temporary. The capitalist and the laborers producing a certain line of goods may get together, organize a democracy in their line of work, place shares of stock in the hands of the laborers, share the management with the laborers and pay as high wages as the business will bear, increase the wages of labor and add it to the selling price

of the output and thus add to the cost of living for other groups. All who thus organize may add to the price of their products until the unorganized suffer intolerably. If all are organized then we shall have a new form of conflict between the different organizations of producers and consumers. We shall still need an Industrial Court as much as we do at the present time, to adjudicate the new type of conflict.

And when the best possible Court has done all that a Court can do, it is not in human wisdom to administer perfect justice or make men contented with their own just shares of the goods of the world. Religion must do its work in the hearts of men; and education must promote a better understanding of social and industrial problems. Industry as a personal virtue, thrift and economy must be honored, instead of the show of wealth and extravagance. Waste and dissipation of every kind must be condemned by enlightened public sentiment.

Just here the thought of education suggests one of the best ways in which the capitalist can soften the bitterness of the laborer and at the same time be perfectly sure that he is also doing the best possible service for the welfare

of the state. The state should greatly improve the educational facilities for all the children of the state, for the benefit of the state as a whole as well as to cause the laborer to feel that his children will have a better chance in life. This educational improvement cannot be made without more money and to secure that additional money for public schools the capitalist should consent to an inheritance tax for public school revenues. The capitalist objects to a tax during his lifetime which diminishes the volume of his business, but he should not object to an inheritance tax on the same ground or on any other ground.

The laborer is made envious and bitter by seeing the children of the capitalist extravagantly indulged and spoiled and enriched with money that labor has produced, while the laborers' children are pinched with poverty and made to start in the world without a fair chance. Now if the laborer could see his children get a good education at the public schools paid for by the accumulated wealth given to the state in the form of an inheritance tax, much of the present ill will would disappear. The children of the capitalist ought not to inherit vast fortunes that they have not earned, and the children of the laborer ought not to

be deprived of the best possible educational advantages, as they now are, because of inadequate public school revenues. An inheritance tax for common schools would not level down but would level up, and would go far toward removing the bitterness that goes with the present injustice. If this were done wisely on a big, generous scale it would go far toward bringing in the feeling of brotherhood so greatly to be desired.

When the machinery of production shall be so adjusted as to work well there will be no strikes or lockouts. Instead of the constant war which radical labor leaders have said is inevitable, we shall have organization, cooperation and peace. Such potential conflicts as are inevitable will be adjusted by courts. Laborers will be organized for the ethical purposes of self-improvement, collective bargaining, mutual understandings, social interests, and economic adjustments. Laborers will own at least small shares in the institutions that they serve, and will know the conditions of the business. The radical will not be chosen as a labor leader, because his destructive thinking will not be wanted. Labor leaders will be able to sit down with capitalists and adjust nearly all difficulties on the ground of common inter-

est. Most potential difficulties will be settled by voluntary arbitration because the parties will be conscious that unless they do so adjust their own difficulties the industrial courts will make the adjustments for them. The capitalistic leader will be interested in the welfare of the workers who are his fellow shareholders in the firm. Public sentiment will be severe with the capitalist who exploits labor. The extravagance and wastefulness of the rich will tend to disappear because condemned by public sentiment. The inherited wealth of the state will pay generous tribute to the state for the advancement of wise welfare work among all classes. The hereditary rich will give so much for the education of the children of all classes that the laborer will not feel so bitter as in the past; for in the new order his children will get a good education and have a good chance. Everyone will realize the significance of industry and economy and integrity. All will see the importance of generous production and wise economy. This is not an impossible picture, for some of the public schools are now teaching these ideals to the masses.

No special class or special interest should be allowed to dominate the state. Class-mindedness is not good for the welfare of the state.

The state must insure for labor an equitable share of its products without the necessity of labor having to fight for it in a manner so wasteful as the strike. The state must also protect property without property owners feeling the necessity for employing private gunmen. The state must also protect the public against the aggressions of any organized class. And since the state is but the political expression of the minds of the whole people, the great task of intelligent and patriotic men and women is to educate public sentiment and lead the people wisely.

Good-will and political wisdom must be made more abundant. Public spirit and patriotic practical politics must go together in our civic life more fully than ever before. We need the preaching of a new crusade to wrest the modern holy land of our government from the hands of any who are selfish in their methods or merely mediocre in their ability. As the present evolution of complex industrial conditions demand greater services from the state, it becomes necessary that the greatest men within the state shall give their unselfish services to the state. And since our state is a republic in which the masses help to choose those who administer the duties of the state,

it is not enough to have among our citizens potential benign and intelligent leadership; for it has been often sadly demonstrated that a poorly educated electorate will not always choose the wisest leadership but instead are often deceived by the demagogue. Therefore the masses must have a vastly better civic education than they have had in the past, and education and religion must work together to create a new social conscience.

LIBRARIES

9°